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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. ~~320~~ 56

THE CITIZENS' SAVINGS AND LOAN ASSOCIATION, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF PERRY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 25, 1890.

(14,380.)

(14,380.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 330.

THE CITIZENS' SAVINGS AND LOAN ASSOCIATION, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF PERRY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of the United States for the southern district of Illinois, before you, between The Citizens' Savings and Loan Association, plaintiff, and The County of Perry (Illinois), defendant, a manifest error hath happened, to the great damage of the said plaintiff, The Citizens' Savings and Loan Association, as by its complaint appears, we, being willing that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, together with all things concern-

2 ing the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 11th day of August, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fifteenth year.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

JAMES T. JONES,
Clerk of Circuit Court of the United States for the Southern District of Illinois.

[Endorsed:] Filed Aug't 11th, 1890. James T. Jones, clerk.

3 *Placita.*

Pleas in the circuit court of the United States of America within and for the southern district of Illinois, held at the city of Springfield, in said district, before Honorable Walter Q. Gresham, judge of the seventh judicial circuit, presiding judge of said court, and Honorable William J. Allen, district judge of said district and associate judge of said circuit court, on Friday, the 10th day of January, at the January term of said court, in the year of our Lord one thou-

sand eight hundred and ninety, and of the Independence of the United States the one hundred and fourteenth year.

JAMES T. JONES, *Clerk.*

THE CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
THE COUNTY OF PERRY (ILLINOIS). } 7699. Assumpsit.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

4 The Citizens' Savings and Loan Association, a corporation residing in the State of Ohio, the plaintiff, puts in its place Messrs. Sanders and Bowers, its attorneys, against The County of Perry, a municipal corporation existing under the laws of the State of Illinois and located in said district, the defendant, in a plea of trespass on the case on promises.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that heretofore, to wit, on the 21st day of May, in the year of our Lord one thousand eight hundred and eighty-nine, came the said plaintiff, by its attorneys, and filed in the office of the clerk of said court its bond for costs and praecipe for summons in said cause; which said bond for costs is in the words and figures following, to wit:

Bond for Costs.

Circuit Court United States of America, Southern District of Illinois, *ss:* June Term, A. D. 1889.

CITIZENS' SAVINGS & LOAN ASSOCIATION OF CLEVELAND, OHIO,
5 *vs.*
THE COUNTY OF PERRY. } In Assumpsit. Damages, $20,000.

We do hereby enter ourselves security for costs in this cause and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 20th day of May, 1889.

SANDERS & BOWERS.

(Endorsed:) Filed May 21st, A. D. 1889. James T. Jones, clerk.

And thereupon, to wit, on the day and year last aforesaid, there was issued out of the clerk's office of said court a summons in said cause, directed to the marshal of said district to execute; which summons, together with the return of said marshal thereto, is in the words and figures following, to wit:

Summons.

Circuit Court of the United States of America, Southern District of Illinois, *ss:*

The United States of America to the marshal of the south-
6 ern district of Illinois, Greeting:

We command you to summon the County of Perry, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of June next, to answer unto the Citizens' Savings and Loan Association of Cleveland, Ohio, of a plea of assumpsit, to its damage, as it alleges, of twenty thousand dollars; and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this 21st day of May, in the year of our
[SEAL.] Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and thirteenth year.

JAMES T. JONES, *Clerk.*

(*Marshal's Return.*)

I have served the within writ by reading the same to W. S. D. Smith, county clerk of the within-named county of Perry, at Pinckneyville, Illinois, on the 22d day of May, A. D. 1889, and also by delivering — the said W. S. D. Smith, county clerk of the
7 said county of Perry, a true copy of this writ this the 22d day of May, A. D. 1889.

H. G. WEBER, *U. S. Marshal,*
By JOHN SCHNEIDER, *Deputy.*

(Endorsed:) Filed May 25th, A. D. 1889. James T. Jones, clerk.

Then, afterwards, to wit, on the 24th day of May, in the year last aforesaid, came the plaintiff, by its attorneys, and filed in said clerk's office its declaration in said cause, which is in the words and figures following, to wit:

Declaration.

In the Circuit Court of the United States, Southern District of Illinois. June Term, A. D. 1889.

THE CITIZENS' SAVINGS & LOAN ASSOCIATION OF CLEVELAND, O., *vs.* THE COUNTY OF PERRY.	Assumpsit. Damages, $20,000.

The Citizens' Savings & Loan Association, a corporation organized and existing under and by virtue of the laws of the State of

Ohio and a resident and citizen of said State, by Sanders
8 and Bowers, *their* attorneys, complains of the County of Perry, a municipal corporation, organized and existing under and by virtue of the laws of the State of Illinois and a resident and citizen of the southern district thereof, on a plea of trespass on the case on promises:

For that whereas the said defendant heretofore, to wit, on the first day of January, A. D. 1871, by Charles E. R. Winthrop, then county judge, and J. Carroll Harriss, then county clerk, made, executed, and delivered, among others (there being one hundred in all), its forty-nine certain bonds, commonly called railroad aid bonds, numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 37, 47, 48, 49, 50, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 79, 81, 82, 92, 93, 94, 95, each for the sum of one thousand dollars; which sum said defendant promised to pay to the Belleville & Southern Illinois Railroad Company or bearer twenty years after date, for value received, with interest at the rate of seven per cent. per annum, payable annually on presentation of the interest coupons thereto attached.

Said bonds are exact copies of each other except as to number of bond printed thereon, and bond No. 1 is in the words and figures following, to wit:

9 No. 11. UNITED STATES OF AMERICA. $1,000.

UNITED STATES OF AMERICA, *State of Illinois.*

PERRY COUNTY, }
State of Illinois. }

Bond.

Know all men by these presents, that twenty years after date the County of Perry, in the State of Illinois, promises to pay to the Belleville & Southern Illinois Railroad Company or bearer, one thousand dollars for value received, with interest from date at the rate of seven per cent. per annum, payable annually on the presentation of the proper coupon hereto annexed.

This bond is one of a series of one hundred of the — tenor and date issued under the authority and in accordance with the requirements of an act of the legislature of the State of Illinois, entitled "An act to incorporate the Belleville & Southern Illinois railroad," approved February 14th, 1857, and is redeemable at the pleasure of said county, at any time after the first day of January, A. D. 1876.

In witness whereof I, Charles E. R. Winthrop, judge of the county court of Perry county, have hereunto set my hand, and
[SEAL.] caused the seal of said county to be affixed, and the clerk to countersign the same at Pinckneyville, the first day of
10 January, A. D. 1871.

CHARLES E. R. WINTHROP,
County Judge.

J. CARROLL HARRISS,
County Clerk.

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *Jan'y 2nd*, 1871

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An — to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869.

[SEAL] In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

Also for that whereas the said defendant heretofore, to wit, on the first day of July, A. D. 1871, by Charles E. R. Winthrop, then county judge, and J. Carroll Harriss, then county clerk, made, executed, and delivered, among others, there being one hundred
11 in all, its certain other series of twenty bonds, being numbered 3, 4, 19, 25, 48, 52, 53, 54, 55, 56, 57, 58, 64, 65, 66, 67, 72, 73, 94, and 99, in each of which said defendant acknowledges itself indebted to the Chester and Tamaroa Coal and Railroad Company or bearer in the sum of one thousand dollars, which sum it promised to pay within twenty years from date, at the American National Exchange bank, in the city of New York, with interest thereon at the rate of seven per cent. per annum, payable semi-annually on presentation at said bank of the proper interest coupon- thereto attached.

Said bonds are exact copies of each other, except as to numbers printed thereon, and numbered 48 of said series, is in the words and figures following, to wit:

1,000 1,000 1,000. UNITED STATES OF AMERICA. 1,000 1,000 1,000.

No. 48. STATE OF ILLINOIS, *County of Perry.* $1,000.

Registered in the office of the auditor of public accounts of the State of Illinois.

Principal and interest collected & paid by the treasurer of the State of Illinois.

Know all men by these presents, that the County of Perry, State of Illinois, is indebted unto the Chester & Tamaroa Coal
12 and Railroad Company, or bearer, in the sum of one thousand dollars, lawful money of the United States, with interest from date at the rate of seven per cent. per annum, payable semi-annually on the first days of Jan'y and July of each year, at the American Exchange National bank, in the city of New York, on the presentation and surrender of the respective interest coupons hereunto annexed. The principal of this bond shall be due and

payable at any time within twenty years from the date hereof, at the option of said county, at said bank in New York city.

This bond is one of a series of bonds issued by the county of Perry, in payment of one thousand dollars of the capital stock of the Chester & Tamaroa Coal and Railroad Company, in pursuance of an election held by the legal voters of Perry county, Illinois, on the 19th day of February, 1870, and by virtue of the provisions of an act of the General Assembly of the State of Illinois, entitled, "An act supplemental to an act entitled 'An act to provide for a general system of railroad incorporation,'" approved November 6th, 1849.

And for the payment of said sum of money and accruing interest thereon, in the manner aforesaid, the faith of the county
13 of Perry, State of Illinois, is hereby irrevocably pledged, as also its property, revenue and resources.

[SEAL.] In testimony whereof, the county court of said county of Perry, have caused these presents to be signed by the county judge, and by the clerk of the county court of said county, and to be sealed with the seal of said court at Pinckneyville in said county on this first day of July A. D. 1871.

CHARLES E. R. WINTHROP,
County Judge.

J. CARROLL HARRISS,
County Clerk.

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *November* 17, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns, in force April 16, 1869."

[SEAL.] In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year
14 aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

Bond No. 48, $1,000. County of Perry, State of Illinois. Interest, seven per cent. Principal payable January 1, 1890. Interest payable January and July, at the American Exchange National bank, in the city of New York.

And plaintiff avers that said series of bonds, bearing date January 1st, 1871, and due Jan'y 1st, 1891, each for the sum of $1,000, issued to the Belleville & Southern Illinois Railroad Company, each have attached thereto one past-due and unpaid coupon, serial number 18, due Jan'y 1st, 1891, said coupons being each for the sum of $70.00, representing one year's interest on bond to which it belongs. Said coupons are exact copies of each other except as to

number of bond printed thereon, and coupon from bond number one is in the words and figures following, to wit:

70. The County of Perry, State of Illinois, will pay to
15 the bearer (70) seventy dollars on the first Monday of January, 1889, being the interest due on bond No. —, issued to the Belleville & Southern Illinois Railroad Company.

J. CARROLL HARRISS,
County Clerk.

And plaintiff further avers that said series of bonds bearing date July 1st, 1871, and due July 1st, 1891, each for the sum of $1,000, issued to the Chester & Tamaroa Coal & Railroad Company, each have attached thereto two past-due and unpaid coupons, serial Nos. 34 and 35, due July 1st, 1888, and January 1st, 1889, said coupons being each for the sum of $35.00 and each representing six months' interest on bond to which it belongs. Said coupons are exact copies of each other, except as to serial numbers, time when due, and number of bond printed thereon; and coupon, serial number 34, due July 1st, 1888, from bond No. 3, is in the words and figures following, to wit:

COUNTY OF PERRY, }
State of Illinois, }

The County of Perry will pay to bearer on the 1st day of July, 1888, at the American National Exchange bank, in the city of New York, thirty-five dollars, it being six months' interest on bond
16 No. — for $1,000.

CHARLES E. R. WINTHROP,
County Judge.

J. CARROLL HARRISS,
County Clerk, Perry County.

And plaintiffs aver that they became the owners and holders of said bonds, with coupons attached, long before the maturity of either of said bonds or said interest coupons; that they purchased same in open market for investment, paying therefor a good and valuable consideration, relying upon the faithful action of the county and State officials in their execution, registration, and delivery and upon all laws and judicial decisions then in force and applicable thereto for their validity.

Plaintiff further avers that said bonds, with said interest coupons attached, were duly registered by the State auditor, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

And plaintiff avers that said county has recognized and acknowledged the validity of said bonds and coupons by the pay-
17 ment of interest thereon for a space of nearly seventeen years regularly, as it became due, by reason whereof and by force of the statute in such case made and provided the said defendant became liable to pay the said plaintiff the said sum of money in

the bonds and coupons specified, according to the tenor and effect thereof; and, being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and faithfully promised to said plaintiff well and truly to pay to said plaintiff the said sums of money in said bonds and coupons specified, according to the tenor and effect of said bonds and coupons aforesaid.

For that whereas the said defendant heretofore, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and eighty-nine, at, to wit, *at* the district aforesaid, became and was indebted to said plaintiff in the sum of twenty thousand dollars of lawful money of the United States of America for divers goods, wares, and merchandise by the said plaintiff before that time sold and delivered to the said defendant and at the special in-
18 stance and request of the said defendant; and, being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandise of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to the said plaintiff so much money as the last aforesaid goods, wares, and merchandise at the time of the sale and delivery thereof were reasonably worth when the said defendant should be thereunto afterwards requested; and the said plaintiff aver- that the said goods, wares, and merchandise last mentioned at the time of the sale and delivery thereof were reasonably worth the further
19 sum of twenty thousand dollars of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, on the same day and year and at the place aforesaid, had notice.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year and at the place aforesaid, was indebted to the said plaintiff in the further sum of twenty thousand dollars of like lawful money as aforesaid for money before that time lent and advanced by the said plaintiff to the said defendant and at the like request of the said defendant, and in the like sum for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant and at the like request of the said defendant, and in the like sum for other money by the said defendant before that time had and received to and for the use of the said plaintiff, and in the like sum for other money before that time and then due and owing to the said plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then

due and owing from said defendant to said plaintiff, and in the like sum for the price and value of work then done and material for the same provided by the said plaintiff for the said defendant and at the like special request of the said defendant;

And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the several sums of money in this count mentioned when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year and at the place aforesaid, accounted, together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of twenty thousand dollars of like lawful money as aforesaid, and, being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested:

Nevertheless, the said defendant (although often requested, etc.) has not yet paid the said several sums of money above mentioned or any or either of them or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused and still does refuse, to the damage of the said plaintiff of twenty thousand dollars, and therefore the said plaintiff brings suit, etc.

SANDERS & BOWERS,
Plaintiff's Attorneys.

(Endorsed:) Filed May 24, 1889. James T. Jones, clerk.

And afterwards, to wit, on the 3d day of June, in the year last aforesaid, came the defendant, by its attorney, and filed in said cause its demur to the declaration; which demur is in the words and figures following, to wit:

22 *Demur to Declaration.*

In the Circuit Court of the United States for the Southern District of Illinois, June Term, A. D. 1889.

THE CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
THE COUNTY OF PERRY. } Assumpsit. Damages, $20,000.00.

And the said defendant, by Thos. J. Layman, its attorney, comes and defends when, &c., and says that the said declaration filed in this cause and each and every count thereof and the matter therein contained in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain its aforesaid action, and that it, the defendant, is not bound by law to answer the same, and this it is ready to verify.

Wherefore, for want of sufficient declaration in this behalf, the defendant prays judgment, and that the plaintiff may be barred from maintaining its aforesaid action, &c.

THOS. J. LAYMAN,
Attorney for Defendant.

(Endorsed:) Filed June 3, 1889. James T. Jones, clerk.

23 Then, afterwards, to wit, on Thursday, the 27th day of June, at the June term of said court and in the year last aforesaid (1889), the following proceedings were had in said cause and entered of record in said court, to wit:

Order for Hearing of Demur to Declaration.

CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
COUNTY OF PERRY. } 7699. Assumpsit.

On motion of defendant, by T. J. Layman, Esq., its attorney, the demur to declaration is set for hearing on the 5th day of July next.

And afterwards, to wit, on Monday, the first day of July, at the term of court and in the year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

Leave to Amend Declaration.

CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
COUNTY OF PERRY. } Assumpsit.

24 On motion of plaintiff, by Messrs. Sanders and Bowers, its attorneys, leave is granted to amend declaration by Monday, the 15th inst.

Then, afterwards, to wit, on the 10th day of July, in the year last aforesaid (1889), came the plaintiff, by its attorneys, and filed its amended declaration in said cause; which is in the words and figures following, to wit:

Amended Declaration.

In the Circuit Court of the United States, Southern District of Illinois, June Term, A. D. 1889.

THE CITIZENS' SAVINGS & LOAN ASSOCIATION *vs.* THE COUNTY OF PERRY.	Assumpsit. Damages, $20,000.

By leave of the court, first obtained, the plaintiff in this suit, The Citizens' Savings & Loan Association, a corporation organized and existing under and by virtue of the laws of the State of Ohio and a resident and citizen of said State, by Sanders & Bowers,
25 its attorneys, brings this amended complaint against the county of Perry, a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois and a resident and citizen of the southern district thereof, and says:

For that whereas the said defendant heretofore, to wit, on the first day of January, A. D. 1871, by Charles E. R. Winthrop, then county judge, and J. Carroll Harriss, then county clerk, made, executed, and delivered, among others (there being one hundred in all), its forty-nine certain bonds, commonly called railroad bonds, numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 37, 47, 48, 49, 50, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 92, 93, 94, 95, each for the sum of one thousand dollars, which said sum defendant promised to pay to the Belleville & Southern Illinois Railroad Company or bearer twenty years after date, for value received, with interest at the rate of seven per cent. per annum, payable annually, on presentation of the interest coupons thereto annexed.

Said bonds are exact copies of each other except as to number printed thereon, and bond No. 1 is in the words and figures following, to wit:

No. 1. UNITED STATES OF AMERICA. $1,000.

26 UNITED STATES OF AMERICA, *State of Illinois.*

PERRY COUNTY, *State of Illinois.*

Bond.

Know all men by these presents, that twenty years after date the County of Perry, in the State of Illinois, promises to pay to the Belleville & Southern Illinois Railroad Company, or bearer, one thousand dollars, for value received, with interest from date, at the

rate of seven per cent. per annum, payable annually, on presentation of the proper coupon hereto annexed.

This bond is one of a series of one hundred of like tenor and date, issued under the authority, and in accordance with the requirements of an act of the legislature of the State of Illinois, entitled, "An act to incorporate the Belleville & Southern Illinois railroad," approved February 14th, 1857, and is redeemable at the pleasure of said county, at any time after the first day of January A. D. 1876.

[SEAL.] In witness whereof, I, Charles E. R. Winthrop, judge of the county court of Perry county, have hereunto set my
27 hand, and caused the seal of said county to be affixed, and the clerk to countersign the same at Pinckneyville, on the first day of January, A. D. 1871.

CHARLES E. R. WINTHROP,
County Judge.

J. CARROLL HARRISS,
County Clerk.

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *Jan. 2nd*, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and affixed the seal of my office the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

Also for that whereas the defendant heretofore, to wit, on the 1st day of July, A. D. 1871, by Charles E. R. Winthrop, then county judge, and J. Carroll Harriss, then county clerk, made, executed, and delivered, among others, there being fifty in all, its certain
28 other series of five bonds, being numbered 3, 4, 19, 25, 48, in each of which the said defendant acknowledges itself indebted to the Chester & Tamaroa Coal and Railroad Company or bearer in the sum of one thousand dollars, which sum it promised to pay within twenty years from date at the American Exchange National bank, in the city of New York, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, on presentation at said bank of the proper interest coupon thereto attached.

Said bonds are exact copies of each other except as to numbers printed thereon, and bond numbered 48 of said series is in the words and figures following, to wit:

UNITED STATES OF AMERICA.

No. 48. STATE OF ILLINOIS, *County of Perry.* $1,000.

Registered in the office of the auditor of public accounts of the State of Illinois.

Principal and interest collected & paid by the treasurer of the State of Illinois.

Railroad Bond.

Know all men by these presents, that the County of Perry, State of Illinois, is indebted to the Chester & Tamaroa Coal and
29 Railroad Company or bearer, in the sum of one thousand dollars, lawful money of the United States, with interest from date at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July of each year, at the American Exchange National bank, in the city of New York, on the presentation and surrender of the respective interest coupons hereunto annexed. The principal of this bond shall be due and payable at any time within twenty years from the date hereof, at the option of said county, at said bank in New York city.

This bond is one of a series of bonds, issued by the county of Perry, in payment of one hundred thousand dollars of the capital stock of the Chester & Tamaroa Coal and Railroad Company, in pursuance of an election held by the legal voters of Perry county, Illinois, on the 19th day of February 1870, and by virtue of the provisions of the act of the General Assembly of the State of Illinois, entitled "An act supplemental to an act entitled An act to provide for a general system of railroad incorporations," approved November 6th, 1849.

And for the payment of said sum of money, and accruing interest thereon, and in the manner aforesaid, the faith of the county of Perry State of Illinois, is hereby irrevocably pledged, as also its property, revenue and resources.

30 In testimony whereof, the county court of said county of Perry, have caused these presents to be signed by the
[SEAL.] county judge and the clerk of the county court of said county, and to be sealed with the seal of said court at Pinckneyville, in said county on this first day of July A. D. 1871.

CHARLES E. R. WINTHROP,
County Judge.

J. CARROLL HARRIS,
County Clerk.

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *November* 17, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act

entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869.

In testimony whereof I have hereunto subscribed my [SEAL.] name and affixed the seal of my office the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

Bond No. 48. $1,000. County of Perry, State of Illinois.
31 Interest, seven per cent. Principal payable January 1, 1890. Interest payable January and July at the *America* American Exchange National bank, in the city of New York.

Also for that whereas the said defendant heretofore, to wit, on the first day of January, A. D. 1872, by Charles E. R. Winthrop, then county judge, and J. Carroll Harris, then county clerk, made, executed, and delivered, among others, there being fifty in all, its certain other series of fifteen bonds, being numbered 52, 53, 54, 55, 56, 57, 58, 64, 65, 66, 67, 72, 73, 94, and 99, and in each of which the said defendant acknowledges itself indebted to the Chester & Tamaroa Coal and Railroad Company or bearer in the sum of one thousand dollars, which sum it promises to pay within twenty years from date at the American Exchange National bank, in the city of New York, with interest thereon at the rate of seven per cent. per annum, payable semi-annually, on presentation at said bank of the proper interest coupon thereto attached.

Said bonds are exact copies of each other except as to numbers printed thereon, and bond No. 52 of said series is in the words and figures following, to wit:

No. 52. UNITED STATES OF AMERICA. $1,000.

32 STATE OF ILLINOIS, *County of Perry.*

Registered in the office of the auditor of public accounts of the State of Illinois.

Principal and interest collected & paid by the treasurer of the State of Illinois.

Railroad Bond.

Know all men by these presents, that the County of Perry, State of Illinois, is indebted to the Chester & Tamaroa Coal and Railroad Company, or bearer, in the sum of one thousand dollars, lawful money of the United States, with interest from date at the rate of seven per cent. per annum, payable semi-annually on the first days of January and July of each year, at the American Exchange National *Exchange* bank, in the city of New York, on the presentation and surrender of the respective interest coupons hereto annexed. The principal of this bond shall be due and payable at any time within twenty years from date thereof, at the option of said county, at said bank, in New York city.

This bond is one of a series of bonds issued by the county of Perry, in payment of one hundred thousand dollars of the capital stock of the Chester & Tamaroa Coal and Railroad Company, in pursuance of an election held by the legal voters of Perry county, Illinois, on the 19th day of February, 1870, and by virtue of the provisions of an act of the General Assembly of the State of Illinois entitled,
33 "An act supplemental to an act entitled An act *entitled An act* to provide for a general system of railroad incorporations," approved November 6th, 1849.

And for the payment of said sum of money, and accruing interest thereon, in the manner aforesaid, the faith of the county of Perry State of Illinois, is hereby irrevocably pledged, as also its property, revenue, and resources.

In testimony whereof, the county court of said county of Perry, have caused these presents to be signed by the county judge
[SEAL.] and by the clerk of the county court of said county, and to be sealed with the seal of said court at Pinckneyville, in said county on this first day of January A. D. 1872.

CHARLES E. R. WINTHROP,
County Judge.

J. CARROLL HARRIS,
County Clerk.

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *January* 1, 1872.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869.
34 In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year
[SEAL.] aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

Bond No. 52. $1,000. County of Perry, State of Illinois. Interest, seven per cent. Principal payable January 1, 1890. Interest payable January and July at the American Exchange National bank, in the city of New York.

And plaintiff further avers that bond number fifty-seven of said series, bearing date January 1st, 1872, and due January 1st, 1892, for the sum of $1,000, issued to the Chester & Tamaroa Coal and Railroad Company, has attached thereto four past-due and unpaid coupons, serial numbers 35, 36, 37, and 38, due January 1st, 1888, July 1st, 1888, January 1st, 1889, and July 1st, 1889, said coupons being each for the sum of $35.00 and each representing six month-' interest on bond to which it belongs. Said coupons are exact copies

of each other except as to serial numbers, time when due, and coupon No. 35, due January 1st, 1888, is in the words and figures following, to wit:

35 COUNTY OF PERRY, *State of Illinois.*

The County of Perry will pay to bearer on the 1st day of January, 1888, at the American Exchange National bank, in the city of New York, thirty-five dollars, it being six months' interest on bond No. 57, for $1,000.

CHARLES E. R. WINTHROP,
County Judge.
J. CARROLL HARRIS,
County Clerk, Perry Co.

That bonds Nos. 52, 53, 54, 55, 56, 58, 64, 65, 66, 67, 72, 73, 94, and 99 of said series, bearing date January 1st, 1872, and due January 1st, 1892, each for the sum of $1,000, issued to the Chester & Tamaroa Coal and Railroad Company, each have attached thereto three past-due and unpaid coupons, serial Nos. 36, 37, and 38, due July 1st, 1888, January 1st, 1889, and July 1st, 1889, each of said coupons being for the sum of $35.00 and each representing six months' interest on bond to which it belongs.

Said coupons are exact copies of each other except as to serial numbers, time when due, and number of bond printed thereon, and coupon number 36, due July 1st, 1888, from bond No. 52 is in the words and figures following, to wit:

COUNTY OF PERRY, *State of Illinois.*

36 The County of Perry will pay to bearer on the 1st day of July, 1888, at the American Exchange National bank, in the city of New York, thirty-five dollars, it being six months' interest on bond No. 52, for $1,000.

CHARLES E. R. WINTHROP,
County Judge.
J. CARROLL HARRIS,
County Clerk, Perry Co.

And plaintiff avers that said series of bonds numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 37, 47, 48, 49, 50, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 92, 93, 94, 95, bearing date January 1st, 1871, and due January 1st, 1891, each for the sum of $1,000, issued to the Belleville & Southern Illinois Railroad Company, each have attached thereto one past-due and unpaid coupon, serial number 18, due January 1st, 1889, said coupons being each for the sum of $70.00, representing one year's interest on bond to which it belongs. Said coupons are exact copies of each other except as to the number printed thereon, and coupon from bond number 1 is in the words and figures following, to wit:

70. The County of Perry, State of Illinois, will pay to the bearer seventy dollars on the first Monday of January, 1889, being the interest due on bond No. 1, issued to the Belleville & South-
37 ern Illinois Railroad Company.

J. CARROLL HARRIS,
County Clerk.

And plaintiffs further aver that the total face value of the coupons herein declared on is $5,565.00, with interest on $3,430 at the rate of 6 per cent. per annum from January 1st, 1889; with interest on $35.00 at the rate of 6 per cent per annum from the first day of January, 1888; with interest on $700 at the rate of 6 per cent. per annum from the first day of July, 1888; with interest on $700 at the rate of 6 per cent. per annum from the first day of January, 1889; with interest on $700 at the rate of 6 per cent. per annum from the first day of July, 1889.

And plaintiffs further aver that said series of bonds issued in the aid of the Belleville & Southern Illinois Railroad Company were authorized by a majority vote of the directors of said county, as required by law and by the order of the county court, at an election held July 3rd, A. D. 1869; that said election was legally called and the proposition in favor of issuing said bonds duly declared carried by the county court of said county of Perry, and the bonds issued in accordance therewith.

And plaintiffs further aver that said series of bonds issued in aid of the Chester & Tamaroa Coal and Railroad Company were
38 authorized by a majority vote of the electors of said county, as required by law and by the order of the county court, at an election held on the 19th day of February, A. D. 1870; that said election was legally called and the proposition in favor of issuing said bonds duly declared carried by the county court of said defendant county, and the bonds issued in accordance therewith.

And plaintiffs aver that they became the owners and holders of said bonds, with coupons attached, long before the maturity of either of said bonds or said interest coupons; that they purchased the same in open market for an investment, paying therefor a good and valuable consideration, without notice of any claimed defect or irregularity in their issue, relying upon the faithful action of the county and State officials in their execution, registration, and delivery, and upon all laws and judicial decisions then in force and applicable thereto for their validity.

Plaintiffs further aver that said bonds, with coupons attached, were duly registered by the State auditor, pursuant to the provisions of an act entitled "An act to fund and provide for paying railroad debts of counties, townships, cities, and towns," in force April 16th, 1869.

39 And plaintiffs aver that said county has recognized and acknowledged the validity of the said bonds by the payment of the interest thereon for the space of nearly seventeen years, regularly as it became due.

By reason whereof and by force of the statute in such cases made

and provided the said defendant became liable to pay the said plaintiff the said sum of money in the said coupons specified, according to the tenor and effect thereof, and, being so liable, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and faithfully promised the said plaintiffs well and truly to pay to the said plaintiff the said sums of money in said coupons specified, according to the tenor and effect of said coupons aforesaid.

For that whereas the said defendant heretofore, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and eighty-nine, at, to wit, *at* the district aforesaid, became and was indebted to the said plaintiff in the sum of twenty thousand dollars of lawful money of the United States of America for divers goods, wares, and merchandise by the said plaintiff before that time sold and delivered to the said defendant and at the special instance and request of the said defendant, and, being so indebted to
40 the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandise of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defendant would well and truly pay to the said plaintiff so much money as the last aforesaid goods, wares, and merchandise at the time of the sale and delivery thereof were reasonably worth when the said defendant should be thereunto afterwards requested; and the said plaintiff aver that the said goods, wares, and merchandise last mentioned, at the time of the sale and delivery thereof, were reasonably worth the further sum of twenty thousand dollars of like lawful money
41 as aforesaid, to wit, at the place aforesaid, whereof the said defendant, afterwards, on the same day and year and at the place aforesaid, had notice.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year and at the place aforesaid, was indebted to the said plaintiff in the further sum of twenty thousand dollars of like lawful money as aforesaid for money before that time lent and advanced by the said plaintiff to the said defendant and at the like request of the said defendant, and in the like sum for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant and at the like request of the said defendant, and in the like sum for other money by the said defendant before that time had and received to and for the use of the said plaintiff, and in the like sum for other money before that time and then due and owing to the said plaintiff for interest upon and for the forbearance

of divers other sums of money before that time and then due and owing from said defendant to said plaintiff, and in the like sum for the price and value of work then done and material for the same provided by the said plaintiff for the said defendant and at the like special request of the said defendant, and, being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on
42 the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the several sums of money in this count mentioned when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant, afterwards, to wit, on the same day and year and at the place aforesaid, accounted, together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of twenty thousand dollars of like lawful money as aforesaid, and, being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, etc.) has not yet paid the said several sums of money above men-
43 tioned or any or either of them or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused and still does refuse, to the damage of the said plaintiff of twenty thousand dollars, and therefore the said plaintiff brings suit, etc.

SANDERS & BOWERS,
Plaintiff's Attorneys.

(Endorsed:) Filed July 10, 1889. James T. Jones, clerk.

And afterwards, to wit, on Friday, the 12th day of July, at the term of court and in the year last aforesaid, the following further proceedings were had in said court and entered of record in said cause, to wit:

Leave to Plead, &c., to Amended Declaration.

CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
COUNTY OF PERRY. } 7699. Assumpsit.

It is ordered by the court that the defendant have leave to plead or demur to amended declaration by Tuesday, the 23d inst.

44 And then afterwards, to wit, on the 23d day of July, in the year last aforesaid, came the defendant, by its attorneys, and filed its pleas to the amended declaration in said cause; which pleas are in the words and figures following, to wit:

Pleas to Amended Declaration.

In the Circuit Court of the United States, Southern District of Illinois, June Term, A. D. 1889.

THE CITIZENS' SAVING AND LOAN ASSOCIATION } Assumpsit. Dam-
vs. } ages, $20,000.00.
THE COUNTY OF PERRY. }

1st plea. And the defendant, by Thos. J. Layman, its attorney, comes and defends the wrong and injury, when, etc.—

And says it did not promise in manner and form as the plaintiff has above thereof complained against it, and of this it puts itself upon the country, etc.

THOS. J. LAYMAN,
Attorney for Defendant.

And plaintiff does the like.

SANDERS & BOWERS,
For Plaintiff.

2nd plea. And for further plea in this behalf as to the said supposed coupons, mentioned in said amended declaration,
45 which were detached from said supposed bonds, purporting to be issued by said defendant to the said Belleville and Southern Illinois Railroad Company, say that the issue of said bonds was not authorized by a majority vote of the electors of said county, as required by law, nor by the order of the county court of said county, at an election held July 3rd, A. D. 1869, and that said election was not legally called; and of this it puts itself upon the country, etc.

THOS. J. LAYMAN,
Attorney for Defendant.

3rd. plea. And for a further plea in this behalf as to said coupons and bonds last above named say *actio non*, because it says that on the 24th day of May, A. D. 1869, the county court of Perry county made an order calling an election to be held in said county on the 3rd day of July, A. D. 1869, to ascertain if the county court of said county should subscribe $150,000.00 — stock to the said Belleville and Southern Illinois Railroad Company; and the defendant avers that the said order (among other things) provided that no bonds be issued or stock subscribed by said court to said railroad company unless said railroad company should locate their machine
46 shops at Du Quoin, in said Perry county, the location of said machine shops at said Du Quoin being one of the conditions of the vote cast at the election held on said 3rd day of July, A. D. 1869, to determine whether or not said county should subscribe said

stock and issue said bonds to said railroad company; and the defendant avers that said railroad company never located said machine shops at said Du Quoin, and this it is ready to verify; wherefore, etc.

THOS. J. LAYMAN,
Attorney for Defendant.

4th plea. And for further plea in this behalf as to the said supposed coupons in the said amended declaration mentioned which were detached from said supposed bonds, purporting to be issued by said defendant to said Chester & Tamaroa Coal and Railroad Company, the said defendant says that the issue of said bonds was not authorized by a majority vote of the electors of said county, as required by law, at an election held in said county on the 19th day of February, A. D. 1870, and that said election was not legally called; and of this it puts itself upon the country, etc.

THOS. J. LAYMAN,
Attorney for Defendant.

47 (Endorsed:) Filed July 23, 1889. James T. Jones, clerk.

And then afterwards, to wit, on the day and year last aforesaid and at the June term of court, the following further proceedings were had in said court and entered of record in said cause, to wit:

Order Setting Cause for Hearing.

CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
COUNTY OF PERRY. } 7699. Assumpsit.

By consent of parties, by their attorneys, this cause is set for the 1st day of August next.

And afterwards, to wit, on Thursday, the 1st day of August, at the term of court and in the year last aforesaid, the following further proceedings were had in said cause and entered of record, to wit:

Order Continuing Cause.

CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
COUNTY OF PERRY. } Assumpsit.

48 On motion of plaintiff, by Messrs. Sanders and Bowers, its attorneys, this cause is continued at cost of plaintiff until Friday, the 6th day of September next, and set for trial on that day.

And afterwards, to wit, on Saturday, the 2d day of November, at the term of court and in the year last aforesaid, the following further proceedings were had in said cause and entered of record, to wit:

Order on Taking Case under Advisement.

CITIZENS' SAVINGS AND LOAN ASSOCIATION vs. COUNTY OF PERRY.	7699.	Assumpsit.

This day comes as well the plaintiff, by Messrs. Sanders and Bowers, its attorneys, as the defendant, by T. J. Layman, Esq., its attorney, and the issue joined is tried by the court, a jury being waived by stipulation in writing, and the court, having heard the evidence and argument of counsel, takes this case under advisement.

49 *Plaintiff's Evidence.*

United States Circuit Court, Southern District of Illinois, June Term, A. D. 1889.

CITIZENS' SAV. & LOAN ASS'N
vs.
THE COUNTY OF PERRY, ILL.

In the above-entitled cause, on Friday, Sep. 6th, 1889, by agreement between counsel, Messrs. Sanders & Bowers, for plaintiff, and Thos. J. Lamon, for defendant, before Judge W. J. Allen, submitted the following testimony, to be considered, in connection with briefs, by a full bench:

Mr. SANDERS: The jury is waived, I believe.

Mr. LAMON: Yes, sir. Jury waived.

Mr. SANDERS: Here is the stipulation (reading):

"A.

Stipulation Waiving Jury Trial.

In the Circuit Court of the United States, Southern District of Illinois, June Term, A. D. 1889.

THE CITIZENS' SAVINGS & LOAN ASSOCIATION vs. THE COUNTY OF PERRY.	Damages, $20,000. No. 7699.	Assumpsit.

It is hereby stipulated and agreed by and between the parties, plaintiff and defendant, in the above-entitled cause that a jury is hereby waived, and the said cause shall be heard and determined by the court.

SANDERS & BOWERS,
Att'ys for Pl'ff.
THOMAS J. LAYMAN,
Att'y for Def't.

50 It is further stipulated and agreed that all matters raised by special pleas herein filed may be proved under the plea of general issue, and under the plea of general issue all matters of defense may be proven the same as though specially pleaded.

SANDERS & BOWERS,
Att'ys for Plaintiff.
THOMAS J. LAYMAN,
Att'y for Def't."

Mr. SANDERS: We then offer the following:

1. A transcript of proceedings in Perry county court relative to the issue of bonds to the Belleville and Southern Illinois Railroad Company.

The transcript is as follows:

B.

B. & S. I. Transcript from Perry County Court.

STATE OF ILLINOIS, } ss:
Perry County, }

At a special term of the county court of Perry county, Illinois, begun and holden at the court-house, in Pinckneyville, on Monday, the seventeenty day of May, A. D. 1869.

Present: Hon. William Elstun, county judge; E. T. Rees, associate J. P.; J. L. Primm, associate J. P.; D. W. Dry, sheriff, and L. T. Ross, clerk.

Ordered by the court that an election be held at the usual places of voting in the several precincts of the county of
51 Perry on the 19th day of June, A. D. 1869, by the judges of election appointed at the September term, A. D. 1868, to ascertain if the county court of said county shall subscribe one hundred and fifty thousand dollars of stock to the Belleville and Southern Illinois Railroad Company; and be it further ordered that no bonds be issued or stock subscribed by said court to the Belleville & Southern Illinois Railroad Company unless twelve hundred and twenty legal voters of said county shall have voted in favor of the same at said election, nor until said company shall have built said road and put the same in operation from Belleville to Duquoin through the town of Pinckneyville, with depot and depot buildings at said town, nor unless said road shall be in operation from Belleville to Duquoin on or before the first day of January, A. D. 1871, and shall locate their machine shops at said Duquoin; and be it further ordered that said bonds shall be in *some* of not less than one hundred nor more than one thousand dollars, payable at any time within twenty years from their date, at the option of the said county court, bearing interest at the rate of seven per cent. per annum.

STATE OF ILLINOIS, }
Perry County, } ss:

52 At a special term of the county court of Perry county, Illinois, begun and holden at the court-house, in Pinckneyville, on Monday, the 24th day of May, A. D. 1869.

Present: Hon. William Elstun, county judge; E. P. Rees, associate J. P.; D. W. Dry, sheriff, and L. T. Ross, county clerk (J. L. Primm, associate justice, being duly notified of this meeting of the court).

And now, on this day, it is ordered by the court that the order of this court made and entered of record on page 391 of this book at a special term of this court held on Monday, the 17th inst., be, and the same is hereby, revoked and rescinded, which was an order appointing an election to be held in the several precincts of this county, on the nineteenth day of June next, for or against a proposed subscription by the county of Perry of the sum of one hundred and fifty thousand dollars stock to the Belleville & Southern Illinois Railroad Company.

And now, on this 24th day of May, A. D. 1869, it is ordered by the court that an election be held at the usual places of voting in the several precints of the county of Perry on the 3d day of July, A. D. 1869, by the judges of election appointed at the September term, A. D. 1868, to ascertain if the county court of said county shall subscribe one hundred and fifty thousand dollars of stock to the Belleville & Southern Illinois Railroad Company.

And be it further ordered that no bonds be issued or stock
53 subscribed by said court to the Belleville & Southern Illinois Railroad Company unless twelve hundred and thirty legal votes of said county shall have voted in favor of the same at said election, nor until said company shall have built said road and put the same in operation from Belleville to Duquoin through the town of Pinckneyville, with depot and depot buildings at said town, nor unless said road shall be in operation from Belleville to Du-Quoin on or before the first day of January, A. D. 1871, and shall locate their machine shops at said Duquoin; and be it further ordered that said bonds shall be in sums of not less than one hundred nor more than one thousand dollars, payable at any time within twenty years from their date, at the option of the said county court, bearing interest at the rate of seven per cent. per annum, and issued under the provisions of the act of the legislature of Illinois of November 6, 1849, and act of April 16, A. D. 1869, entitled An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns.

STATE OF ILLINOIS, }
Perry County, } ss:

At a regular term of the county court of Perry county, Illinois, begun and holden at the court-house, in the town of Pinckneyville,

on Monday, the fifth day of December, A. D. one thousand
54 eight hundred and seventy.

Present: Hon. Charles E. R. Winthrop, county judge; J. L. Primm and James Ervin, associate justices; Daniel W. Dry, sheriff, and J Carroll Harris, county clerk.

In the Matter of the Stock Subscribed to the Belleville and Southern Illinois Railroad Company.

Be it ordered by the court that the judge and clerk of this court issue this day to the Belleville & Southern Illinois Railroad Company one hundred bonds of one thousand dollars each, bearing date January first, A. D. 1871, with interest at the rate of seven per cent. per annum from their date, and payable on the first day of January, 1891, and redeemable at the pleasure of the county any time after the first day of January, 1876, on account of the subscription of said county to the capital stock of said company heretofore made by the court in accordance with an order of this court made May 24th, 1869, submitting to the legal voters of Perry county the question of subscribing $150,000 to the capital stock of said company, under which order a special election was held on the third day of July, 1869, and a majority of the legal voters of said county voted for such subscription.

Thereupon, in accordance with the foregoing order of this court, the judge of this court and the clerk thereof proceeded to execute said bonds (the same being numbered consecutively from 1 to
55 100) and delivered the same to the president and secretary of said B. & S. I. R. R. Co., who thereupon delivered to said court the following certificate:

BELLEVILLE, ILLINOIS,
OFFICE OF B. & S. I. R. R. Co.

This certifies that the county of Perry, State of Illinois, is the owner of one thousand shares of one hundred dollars each of the capital stock of the Belleville & Southern Illinois Railroad Company, transferable only upon the books of said company.

In witness whereof the president and secretary of said company have hereunto set their hand this fifth day of Dec., 1870.

DAVID L. PHILLIPS, *President.*
EDWARD F. LEPNARD, *Secretary.*

STATE OF ILLINOIS, }
Perry County, } *ss:*

I, W. S. D. Smith, clerk of the county court of Perry county, Illinois, do hereby certify that the attached and foregoing papers, consisting of two sheets of legal cap paper, contain a full, true, and complete copy of all the orders found of record upon the records of the county court of said county relative to the calling of election for and subscription of stock to the Belleville & Southern Illinois Railroad Company by said Perry county.

56 Witness my hand and the seal of said court, at Pinckneyville, this 15th day of February, 1888.

W. S. D. SMITH, *Clerk.*

2. A transcript of proceedings in the county court of Perry county, Illinois, relative to the issue of bonds to the Chester & Tamaroa Coal and Railroad Company.

Said transcript is as follows:

C.

"Chester & Tamaroa" Election Transcript from Perry County Court.

STATE OF ILLINOIS, } ss.:
Perry County, }

At a special term of the county court of Perry county, Illinois, begun and holden at the court-house, in Pinckneyville, on Tuesday, the 18th day of January, A. D. 1870.

Present: Hon. Charles E. R. Winthrop, Co. judge; James L. Primm, associate justice; D. W. Dry, sheriff, and J. Carroll Harriss, county clerk.

In the Matter of an Order for Issuing $100,000 County Bonds to the Chester & Tamaroa Coal and Railroad Company.

TUESDAY, *January* 18, A. D. 1870.

Ordered by the court that an election be held at the usual places of voting in the several precincts of the county of Perry on the 19th day of February, A. D. 1870, by the judges of election appointed at the September term, A. D. 1869, of this court to ascertain if
57 the county court of said county shall subscribe one hundred thousand dollars to the capital stock of the Chester & Tamaroa Coal and Railroad Company.

And be it further ordered that no stock be subscribed to the capital stock of said coal and railroad company unless nine hundred and eighty-four (984) legal voters of said county shall have voted for the same at said election.

And be it further ordered that the subscription to the capital stock of said company shall be paid in county bonds in sums of not less than one hundred dollars nor more than one thousand dollars each, payable at any time within twenty years from their date, at the option of said county court, bearing interest at the rate of seven per cent. per annum; the said bonds to be registered and paid as provided in an act entitled An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns, in force April 16, 1869; but no bonds shall be registered or paid except in the following manner and upon the following conditions, to wit: $50,000 of said bonds shall be issued to said railroad and coal company when they shall have completed said road and cars for passengers and freight shall have run thereon to Pinckneyville, in said Perry county, and depot and depot buildings shall have been established or built within the corporate limits of said
58 town of Pinckneyville, provided the work on said road shall commence at Tamaroa and depot and depot buildings shall have been established or built within the corporate limits of said

town of Tamaroa; and be it further ordered that the residue, $50,000, shall be issued when said road shall be completed through the county and thence to the terminus of said road and cars shall have run thereon and all necessary depot and depot buildings shall have been established or built as above required and specified.

The ballots in favor of subscribing the stock shall contain the words "for subscription" and those against the subscription "against subscription."

STATE OF ILLINOIS, }
Perry County, } *ss:*

At a regular term of the county court of Perry county, begun and holden at the court-house, in Pinckneyville, on Monday, March 7th, A. D. 1870.

Present: Hon. Charles E. Winthrop, Co. judge; J. L. Primm, associate justice; D. W. Dry, sheriff, and J. Carroll Harriss, county clerk.

In the Matter of the County Court of Perry County Subscribing $100,000 Stock to the Chester & Tamaroa Coal and Railroad Company.

TUESDAY, *March 8th, A. D.* 1870.

59 Whereas at the January special term, 1870, of the county court of Perry county, State of Illinois, an order was made calling an election to be held in the usual places of voting in said counties for the purpose of voting for or against authorizing the county court of said Perry county to subscribe one hundred thousand ($100,000) dollars to the capital stock of the Chester & Tamaroa Coal and Railroad Company; and whereas, in pursuance of said order and published notices thereof, as required by law, said election was held in said county on the 19th day of February, A. D. 1870; and whereas it appears from the returns of said election on file in the county clerk's office of said county and the certificate of the board of canvassers that a majority of the legal voters of said county of Perry (assuming the standard required by law and the said order of court taking as a basis the number of votes cast at the last general election for county officers) having voted in favor of subscribing said stock: Now, therefore, it is ordered by the court, in pursuance of said order of court and the election held thereunder and the statutes in such case made and provided, that the county of Perry, in the State of Illinois, do subscribe one hundred thousand dollars to the capital stock of the Chester & Tamaroa Coal and Rail-
60 road Company, to be paid in the bonds of said county, to be issued in accordance with said order of court under which said election was held, and to be registered and paid as provided by an act of the General Assembly of the State of Illinois in force Feb. 16, 1869, entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns;" and it is further ordered by said court that the judges of this court subscribe said stock on the books of said company, and that the same be attested by the clerk of this court under the seal of this court.

STATE OF ILLINOIS, }
Perry County, } ss:

At a regular term of the county court of Perry county, Illinois, for the transaction of county business, begun and holden at the court-house, in Pinckneyville, on Monday, the 6th day of June, A. D. 1871.

Present: Hon. Charles E. R. Winthrow, Co. judge; James L. Primm, associateJ. P.; James Ervin, associate J. P.; Daniel W. Dry, sheriff, and J. Carroll Harris, Co. clerk.

WEDNESDAY, *June 8th*, A. *D.* 1870.

Court met pursuant to adjournment.
Present as on yesterday.

In the Matter of the Stock Subscribed to the Chester and Tamaroa Coal and Railroad Company.

61 On this day is presented to the court the certificate of stock issued to the county of Perry, State of Illinois, by the Chester & Tamaroa Coal and Railroad Company, which said certificate is ordered to be recorded and filed, the said certificate being in the words and figures following, viz:

Chester & Tamaroa Coal and Railroad Company.

No. 2. 1,000 shares. Shares, $100 each.

This certifies that the county of Perry, in the State of Illinois, has subscribed and is entitled to the benefits of one thousand shares of the capital stock of the "Chester & Tamaroa Coal and Railroad Co.," to be paid in Perry county bonds as provided by the terms of subscription made by the county court on the books of the company and the election held on the 19th day of February, 1870, authorizing said court to make said subscription and transferable on conditions as provided in the by-laws.

[U. S. R. S.; 25 cts.; cancelled.]

[CORPORATE SEAL.] D. C. BARBER, *President.*
Z. C. CURLEE, *Sec.*

Tamaroa, Illinois, March 8th, 1870.

STATE OF ILLINOIS, }
Perry County, } ss:

62 At a special term of the county court of Perry county, Illinois, begun and holden at the court-house, in Pinckneyville, on Friday, the tenth day of November, A. D. 1871.

Present: Hon. Charles E. R. Winthrow, county judge; J. L. Primm, associate justice; James Ervin, associate justice, and J. Carroll Harriss, county clerk.

In the matter of the subscription of stock to the Chester & Tamaroa Coal and Railroad Company.

Order to Issue Bonds, $50,000.00.

Whereas at the January special term, 1870, of the county court of Perry county, Illinois, to wit, on the 18th day of January, A. D. 1870, an order was made by the said county court and entered of record, submitting to the legal voters of said Perry county the question of voting for or against authorizing the said county court to subscribe $100,000 to the capital stock of the Chester & Tamaroa Coal and Railroad Company; and whereas it was provided that no stock should be subscribed unless nine hundred and eighty-four legal voters should vote in favor of such subscription; and whereas it was further provided by said order that said stock should be paid in the bonds of said county in sums of not less than one hundred nor more than one thousand dollars, to bear interest at the rate of seven per cent. per annum; and whereas
63 it was further provided that said bonds be registered and paid as provided by an act of the General Assembly of the State of Illinois entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869, and upon the following conditions, to wit, fifty thousand dollars of said bonds to be issued to said company when they shall have completed said railroad and cars for passengers and freight shall have run thereon to Pinckneyville and depot and depot buildings shall have been established or built within the corporate limits of said town of Pinckneyville, provided said work shall be commenced at Tamaroa and depot and depot buildings shall have been established or built at Tamaroa, and the residue, $50,000, to be issued when said road should be completed through the county and thence to its terminus, and necessary depots and depot buildings shall have been established and built, &c.; and whereas at the March term, A. D. 1870, of said county court an order was made in pursuance of the election held at the several precincts in said county on the 19th day of February, 1870, in pursuance of the said order above recited and the notices of the county clerk thereof and of the statutes in such cases made and provided — an order was made
64 by the said county court that the said county court subscribe $100,000 to the capital stock of the said Chester & Tamaroa Coal and Railroad Company, to be paid in the bonds of said county according to the conditions of said order calling said election and ordering and authorizing the judges of said court to subscribe the said stock on the books of said company, and that the same be attested by the clerk of said court and the seal thereof attached; and whereas at the said March term, 1870, of said court the judges of said court did in pursuance of said order subscribe one thousand shares of one hundred dollars each to the capital stock of said Chester & Tamaroa Coal and Railroad Company on the books of said company, which subscription was attested by the clerk of said county court and the seal thereof attached; and whereas at the June term, 1870, of said court a certificate of stock in said Chester & Tamaroa Coal and Rail-

road Company for one thousand shares of one hundred dollars each was presented to said court by D. C. Barber, president of said coal and railroad company, which said certificate was accepted and ordered to be recorded and filed in the office of the clerk of said county court; and whereas said company have completed their said railroad from Tamaroa to Pinckneyville and have run car- for freight and passengers thereon and have built depot build-
65 ings in said towns of Tamaroa and Pinckneyville, and said company have complied with and fulfilled all the conditions of the said order of said court made at the January special term, 1870, to entitle said company to have and receive of and from the said county of Perry the first issue of said bonds:

Now, therefore, be it ordered by the court that Charles E. R. Winthrop, judge of the county court, and J. Carroll Harriss, clerk of said court, sign and deliver to said company or their authorized agent or attorney fifty bonds of the said county for the sum of one thousand dollars each; that the said bonds bear date of the first day of July, 1871, and draw interest from their date, payable semi-annually, at the American Exchange National bank, in the city of New York, and that all coupons on said bonds maturing on and previous to the said first day of July, 1871, be cut off by the said Charles E. R. Winthrow, judge, and J. Carroll Harriss, clerk of said court, before delivering the same to said company, and that the said judge of the county court be authorized to certify, under oath, that all the conditions of the order made on the 18th day of January, 1870, above recited, have been complied with by said Chester & Tamaroa Coal and Railroad Company, and that said bonds
66 be registered and paid in pursuance of an act of the General Assembly of the State of Illinois entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns."

STATE OF ILLINOIS, } *ss:*
Perry County, }

At a regular term of the county court of Perry county, Illinois, begun and holden at the court-house, in Pinckneyville, on Monday, the fourth day of December, A. D. 1871.

Present, Hon. Charles E. R. Winthrop, Co. judge; James L. Primm, associate J. P.; James Ervin, associate J. P.; Samuel A. Beard, sheriff, and J. Carroll Harris, Co. clerk.

WEDNESDAY, *December 6th*, A. D. 1871.

Court met pursuant to adjournment.

Present as heretofore during this term.

In the Matter of the Subscription of Stock to the Chester & Tamaroa Coal and Railroad Company.

Order to Issue Bonds, $50,000.00.

On this sixth day of December, A. D. 1871, it is ordered by the court that Charles E. R. Winthrop, judge, and J. Carroll Harriss,

clerk of this court, execute and deliver to the Chester & Tamaroa Coal and Railroad Company, their agent or attorney, fifty (50) bonds of this county, heretofore authorized by a vote of the people of this county at an election held on the 19th day of February, 1870,
67 said bonds to be of the sum of one thousand dollars ($1,000) each, and to be dated January 1st, 1872, and to be redeemable at any time within twenty (20) years, at the option of the county court of this county, and to bear interest from their date at the rate of seven (7) per cent. per annum, payable semi-annually at the American Exchange National bank, in New York, on the first days of January and July in each year, said bonds to have interest coupons attached, but all such coupons on said bonds which mature on before the said first day of January, 1872, shall be cut off and destroyed before the delivery of said bonds, the principal and interest of said bonds to be paid as provided in an act of the General Assembly of the State of Illinois entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869.

The said fifty thousand dollars of county bonds to be in full payment for one hundred thousand dollars of stock heretofore by this court subscribed to said Chester & Tamaroa Coal and Railroad Company, the first instalment of fifty thousand dollars of the bonds of this county having been heretofore issued bearing date July 1st, 1872.

And it is further ordered that upon the delivery of said bonds to said coal and railroad company a new certificate of stock be
68 received and the certificate of stock heretofore issued to this county be cancelled and returned to said county.

STATE OF ILLINOIS, } ss:
Perry County, }

I, W. S. D. Smith, clerk of the county court of Perry county, Illinois, do hereby certify that the above and foregoing is a full, true, and complete transcript from the records of the proceedings of the county court of Perry county, Illinois, and of all the orders made therein relative to calling an election for February 19, 1870, and subscribing stock and issuing bonds by said county to the Chester & Tamaroa Coal and Railroad Company (not including orders made for elections in said matters in the year 1869, at which 1869 election there was not any majority or supposed majority of votes for such subscription of stock or issue of bonds).

Witness my hand and the seal of the said court, at Pinckneyville, this 15th day of February, 1888.

[SEAL.] W. S. D. SMITH, *Clerk.*

Mr. LAYMON: With reference to this Chester & Tamaroa record there was an election ordered on the matter in May, 1869, which failed to carry. We want all the records in, and if you are a mind to we will introduce our record, as we want it all in, that's all.

69 Mr. SANDERS: Mr. Bowers, see if that is the same; and, if so, we will.

(After consultation and inspection of record:)

Mr. BOWERS: This is an exact copy of theirs, after the time when this is dated, eighteenth day of January, 1870. That corresponds with their book with the exception of what goes before that order. Let that go in.

Mr. LAYMON: My object was to make the record as short as possible. I have the clerk here and I wanted to prove by him that these were all the orders made and the only orders.

Mr. BOWERS: But there were orders before these two orders.

Mr. SANDERS: On a vote that did not carry.

The COURT: Very well, then, Mr. Laymon; you needn't introduce all, but just introduce the balance.

3. Certificate of registration of bonds issued in aid of the Belleville & Southern Illinois railroad by the county of Perry, Illinois; certificate of Charles E. R. Winthrop, county judge of Perry county, Illinois. Filed at the State auditor's office Jan. 2nd, 1871.

The following is a copy of said certificate:

D.

Registration Certificate "B. & S. I." Ry Bonds.

STATE OF ILLINOIS, }
County of Perry. }

PINCKNEYVILLE, *Dec. 5th*, 1870.

To the auditor of public accounts of the State of Illinois, Springfield, Illinois.

SIR: I herewith transmit to you for registration in your
70 office, under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the following bonds, being one hundred in number, dated January 1st, 1871, amounting to ($100,000) one hundred thousand dollars, payable on the first day of January, 1891, and bearing interest at the rate of seven per centum per annum, payable annually. These bonds are issued by the county court of the county of Perry and State of Illinois to the Belleville & Southern Illinois Railroad Company, under and by authority of the provisions of an act entitled An act to incorporate the Belleville and Southern Illinois railroad, approved Feb. 14, 1857; and I, as judge of the county court of said county, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds and to entitle them to the benefits of the said act last referred to have been fully complied with to the best of my knowledge and belief.

CHARLES E. R. WINTHROP,
County Judge, Perry County.

Subscribed and sworn to by the said Charles E. R. Winthrop, before me, this 5th day of December, A. D. 1870.

[SEAL.] J. CARROLL HARRISS,
71 *Clerk of the Co: Court.*

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *Sept. 3d*, 1889.

I, Charles W. Pavey, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing annexed instrument is a true, full, and correct copy of certificate of Charles E. R. Winthrop, as county judge, Perry Co., in relation to the registration of bonds issued by said county to the Belleville & Southern Illinois Railroad Company now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name
[SEAL.] and affix the seal of my office, at Springfield, the day and year first above written.

C. W. PAVEY,
Auditor of Public Accounts.

4. Certificate of registration of bonds in aid of the Chester & Tamaroa Coal and Railroad Company by Perry county, Illinois; certificate of Charles E. R. Winthrop, county judge of Perry county, Illinois, filed at the State auditor's office January 1st, 1872.

The following is a copy of said certificate:

E.

Registration "Chest. & Tam." R'y Bonds.

STATE OF ILLINOIS, }
County of Perry. }

PINCKNEYVILLE, *Dec. 6th*, 1871.

72 To the auditor of public accounts of the State of Illinois.

SIR: I hereby certify that the following-described bonds are entitled to registration in your office under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the bonds being numbered from number 51 to number 100, incl., for $1,000 each, dated Jan. 1st, 1872, and payable within twenty years from date, being in all fifty bonds, and amount to $50,000.00, and bearing interest at the rate of seven per cent. per annum, payable semi-annually on the first day of January and July. These bonds are issued by the county court of Perry county, in the county of —— and State of Illinois, to the Chester & Tamaroa Coal and Railroad Company under and by authority of the provisions of "An act supplemental to an act entitled An act to provide for a general system of railroad incorporations," approved November 6th, 1849, approved ——, 18—, and by a vote of the people of said county at an election held on the 19th day of February, 1870, and I, as county judge of said county, do hereby certify that

all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds and to entitle them to the benefits of said act last referred to have
73 been fully complied with, to the best of my knowledge and belief.

CHARLES E. R. WINTHROP,
County Judge.

Subscribed and sworn to by the said Charles E. R. Winthrop before me this 7th day of December, A. D. 1871.

HENRY CLAY,
[SEAL.] *Notary Public.*

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *Sept. 3rd*, 1889.

I, Charles W. Pavey, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of Charles E. R. Winthrop, as county judge, Perry Co., in relation to registration of bonds issued by said county to the Chester & Tamaroa Coal and Railroad Company now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[SEAL.] C. W. PAVEY,
Auditor of Public Accounts.

5. Certificate of registration of bonds issued in aid of the Chester & Tamaroa Coal and Railroad Company by Perry county, Illinois; certificate of Charles E. R. Winthrop, county judge of Perry
74 county, Illinois, filed at the State auditor's office November 17th, 1871.

The following is a copy of said certificate:

F.

Registration Certificate "Chester & Tamaroa Ry" Bonds.

STATE OF ILLINOIS, }
County of Perry. }

NOVEMBER 15TH, 1871.

To the auditor of public accounts of the State of Illinois, Springfield, Illinois.

SIR: I herewith transmit to you for registration in your office, under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, the following bonds, being from one to fifty, inclusive, in numbers, dated first day of July, 1871, amounting to ($50,000) fifty thousand dollars, payable within twenty years from date, and bearing interest at the rate of seven per cen-

tum per annum, payable semi-annually. These bonds are issued by the county of Perry, in the county of Perry and State of Illinois, to the Chester & Tamaroa Coal and Railroad Company, under and by authority of the provisions of an act supplemental to an act entitled An act to provide for a general system of railroad incorporations, approved November sixth, 1849.

And I, as county judge of said county, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds and to entitle them to the benefits of the said act last referred to have been fully complied with to the best of my knowledge and belief.

CHARLES E. R. WINTHROP,
County Judge.

Subscribed and sworn to by the said Charles E. R. Winthrop, as judge, before me this fifteenth day of November, A. D. 1871.

[SEAL.] HENRY CLAY,
Notary Public.

(On the margin of the above certificate, opposite the date "November 6th, 1849, are written the words "Vote 19 Feb'y, 1870.")

AUDITOR'S OFFICE, ILLINOIS, SPRINGFIELD, *Sept. 3d*, 1889.

I, Charles W. Pavey, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a full, true, and correct copy of certificate of Charles E. R. Winthrop, as county judge, Perry Co., in relation to registration of bonds issued by said county to the Chester & Tamaroa Coal and Railroad Company, now on file in and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[SEAL.] C. W. PAVEY,
Auditor of Public Accounts.

76

6. Bonds in suit.—One hundred bonds, of one thousand dollars each, issued by the county of Perry, Illinois, to the Belleville & Southern Illinois railroad, and one hundred bonds, of one thousand dollars each, issued by the said county to the Chester & Tamaroa railroad, in two series of fifty bonds each.

The following are copies of specimen bonds of each series, to wit, bond No. one of the issue to the Belleville & Southern Illinois railroad, and bonds No. forty-eight and No. fifty-two of those issued to the Chester and Tamaroa railroad:

G.

Bonds. Copy No. 1, B. & S. I. Ry.

No. 1. UNITED STATES OF AMERICA. $1,000.

UNITED STATES OF AMERICA, *State of Illinois.*

PERRY COUNTY, *State of Illinois.*

Bond.

Know all men by these presents, that twenty years after date the county of Perry, in the State of Illinois, promises to pay to the Belleville & Southern Illinois Railroad Company, or bearer, one thousand dollars, for value received, with interest from date at the rate of seven per cent. per annum, payable annually on presentation of the proper coupon hereto annexed.

This bond is one of a series of one hundred of like tenor
77 and date issued under the authority and in accordance with the requirements of an act of the legislature of the State of Illinois, entitled "An act to incorporate the Belleville & Southern Illinois railroad," approved February 14th, 1857, and is redeemable at the pleasure of said county, at any time after the first day of January, A. D. 1876.

In witness whereof, I, Charles E. R. Winthrop judge of the county court of Perry county, have hereunto set my hand
[SEAL.] and caused the seal of said county to be affixed and the clerk to countersign the same, at Pinckneyville, the first day of January, A. D. 1871.

CHARLES E. R. WINTHROP,
County Judge.

J. CARROLL HARRISS,
County Clerk.

(Endorsed.)

AUDITOR'S OFFICE, SPRINGFIELD, *Jan. 2nd*, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and affixed the seal of my office the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

78 H.

Bond No. 48, "C. & T. R'y."

UNITED STATES OF AMERICA.

No. 48. STATE OF ILLINOIS, *County of Perry.* $1,000.

Registered in the office of the auditor of public accounts of the State of Illinois.

Principal and interest collected & paid by the treasurer of the State of Illinois.

Railroad Bond.

Know all men by these presents, that the county of Perry, State of Illinois is indebted to the Chester & Tamaroa Coal and Railroad Company, or bearer, in the sum of one thousand dollars, lawful money of the United States with interest from date at the rate of seven per cent. per annum payable semi-annually on the first days of January and July of each year, at the American Exchange National bank, in the city of New York, on the presentation and surrender of the respective interest coupons hereto annexed.

The principal of this bond shall be due and payable at any time within twenty years from the date hereof, at the option of said county, at said bank in New York city.

This bond is one of a series of bonds, issued by the county of Perry, in payment of one hundred thousand dollars of the cap-tal stock of the Chester & Tamaroa Coal and Railroad Company, in pursuance of an election held by the legal voters of Perry
79 county, Illinois, on the 19th day of February, 1870, and by virtue of the provisions of an act of the General Assembly of the State of Illinois, entitled, "An act supplemental to an act entitled An act to provide for a general system of railroad incorporation," approved November 6th, 1849.

And for the payment of said sum of money and accruing interest thereon and in the manner aforesaid the faith of the county of Perry, State of Illinois, is hereby irrevocably pledged, as also its property, revenue and resources.

[SEAL.] In testimony whereof the county court of said county of Perry have caused these presents to be signed by the county judge and the clerk of the county court of said county and to be sealed with the seal of said court, at Pinckneyville, in said county, on this first day of July, A. D. 1871.

CHARLES E. R. WINTHROP,
County Judge.

J. CARROLL HARRISS,
County Clerk.

(Endorsed.)

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *November* 17, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869.

80 [SEAL]. In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

Bond No. 48. $1,000. County of Perry, State of Illinois. Interest, seven per cent. Principal payable January 1, 1890. Interest payable January and July, at the American Exchange National bank, in the city of New York.

I.

Copy Bond No. 52, "Chest. & Tamaroa Ry."

UNITED STATES OF AMERICA.

No. 52. STATE OF ILLINOIS, *County of Perry.* $1,000.

Registered in the office of the auditor of public accounts of the State of Illinois.

Principal and interest collected and paid by the treasurer of the State of Illinois.

Railroad Bond.

Know all men by these presents, that the county of Perry, State of Illinois, is indebted *under* the Chester & Tamaroa Coal and Railroad Company, or bearer, in the sum of one thousand dollars, lawful money of the United States, with interest from date at the rate of seven per cent. per annum, payable semi-annually on

81 the first days of January and July of each year, at the American National Exchange bank, in the city of New York, on the presentation and surrender of the respective interest coupons hereunto annexed. The principal of this bond shall be due and payable at any time within twenty years from the date thereof, at the option of said county, at said bank in New York city.

This bond is one of a series of bonds issued by the county of Perry, in payment of one hundred thousand dollars of the capital stock of the Chester & Tamaroa Coal and Railroad Company, in pursuance of an election held by the legal voters of Perry county, Illinois, on the 19th day of February, 1870, and by virtue of the provisions of an act of the General Assembly of the State of Illinois, entitled "An act supplemental to an act entitled An act to provide

for a general system of railroad incorporations," approved November 6th, 1849.

And for the payment of said sum of money and accruing interest thereon, in the manner aforesaid, the faith of the county of Perry, State of Illinois, is hereby irrevocably pledged, as also its property, revenue and resources.

[SEAL.] In testimony whereof the county court of said county of Perry have caused these presents to be signed by the
82 county judge, and by the clerk of the county court of said county and to be sealed with the seal of said court at Pinckneyville in said county, on this first day of January A. D. 1872.

CHARLES E. R. WINTHROP,
County Judge.

J. CARROLL HARRISS,
County Clerk.

(Endorsed.)

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *January* 1, 1872.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns, ' in force April 16th, 1869.'"

[SEAL.] In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

C. E. LIPPINCOTT,
Auditor P. A.

Bond No. 52. $1,000. County of Perry, State of Illinois. Interest, seven per cent. Principal payable January 1, 1892.
83 Interest payable January and July at the American National Exchange bank, in the city of New York.

(Each of the bonds has printed across the face of it, in differently colored ink and large figures, the number of its denomination, 1,000.)

Objection by counsel for defendant to the introduction of the bonds, the ground of objection being stated as follows:

I.

Objections to Bonds.

Mr. LAYMAN: We object to these Belleville & Southern Illinois railroad bonds, in the first place, because there is in evidence a record which shows that there was a proposition submitted to the voters of Perry county on which they voted in July, 1869, to subscribe stock to that railroad company under the general railroad act of 1849, which law limits the amount to a hundred thousand dollars that the county should subscribe, while the proposition they

submitted was for a hundred and fifty thousand, which was the proposition voted on, that being in excess of the amount allowed by law.

We do not remember what the face of the bonds shows, but we find a transcript of the order which they have here in evidence.

The view we take of the matter is this: The law of '49,
84 being a statute granting special privileges and which increases the burdens of taxation, must, under the rule announced by the supreme court of Illinois, be strictly construed.

The rule of law I understand is that statutes increasing the burdens of taxation and special taxation must be construed strictly.

They could have submitted a proposition for voting on one hundred thousand, but they did in fact submit a proposition to vote on a hundred and fifty thousand, and that vote was a nullity.

In the second place, these bonds recite on their face that they are issued under an act passed in 1857—that is, an act incorporating this Belleville & Southern Illinois Railway Company, passed at that time. But there was no more power under that act to issue bonds or anything of that kind than there is now given in the act of replevin or the bastardy act—not a bit more.

And the rule of the law I understand is that where these extraordinary powers are carried out by municipalities the power exercised by them must be given in clear and unmistakable terms—must be strictly adhered to and must be expressly given.

But it may be said, as it shows there, that the recital of the bond, that it was issued under the charter act of '57, is not conclusive evidence at all. It is a rule of construction in the Federal
85 courts, I believe, that they always construe the recitals in a bond as evidence of the fact recited. That is the general rule.

But again the act of April 16th, '69, under which these bonds were registered, provides that where bonds are issued by the county, the county judge shall state in his certificate under what law they were issued. Let me see the transcript of the registration of these bonds. Let us see what Judge Winthrop swears to here on the Belleville & Southern Illinois bonds. This is what he says: "These bonds are issued by the county court of the county of Perry and State of Illinois to the Belleville & Southern Illinois Railroad Company under and by authority of the provisions of an act entitled An act to incorporate the Belleville & Southern Illinois railroad, approved February 14th, 1857." Now, there was no power in that act to issue bonds. In fact, the supreme court of Illinois have so decided.

But, in the third place, there is nothing in the recital of the bonds with reference to the vote or election whatever; and the rule laid down by Judge Dillon—and it is the basis of the opinion of the Supreme Court of the United States—is that where there are no recitals of that sort on the bond the plaintiff, in order to en-
86 title him to recover, must aver and prove that there was a vote authorizing their issue, and that the bonds were issued to the railroad company for a purpose authorized by law. Now,

there are no recitals that they were so issued, and the word vote don't appear. They are seeking to introduce these bonds without proving that there was a vote, when in fact the truth is there never was a vote; but if there was, as I said, Judge Dillon also says they must prove that the bonds were issued for a purpose authorized by law. Now, is there any purpose for which a county can issue bonds to a railroad company except in payment for a subscription of stock? Certainly; but this does not show that it was for a subscription of stock, but, so far as appears from these bonds at this stage of the proceeding, they might have been issued to the railroad company for transporting freight from some firm in Boston or New York.

But, finally, I may state that there is no evidence as to the issue of these bonds at all. It can be shown that the proposition fell short of being carried by three or four hundred votes. Further than that, the evidence offered by the plaintiff—his own transcript—shows that the proposition voted on itself provided that no bonds should be issued unless machine shops were located at Duquoin, and there is no evidence that that condition has been com-
87 plied with, and the fact is that no machine shops have been located there.

The COURT: My object in having the objections stated was that if they were anything of a formal nature they might be obviated. I am not disposed now to hear an argument. We have your objections fully stated. These bonds may go in, subject to those objections.

7. Coupons of bonds introduced.

K.

Coupons, 49, "B. & S. I. Ry."

Forty-nine coupons of bonds numbered 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 37, 47, 48, 49, 50, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 82, 92, 93, 94, 95, each for one thousand dollars, issued to the Belleville & Southern Illinois Railroad Company or bearer, payable twenty years after date, with interest, at seven per cent. per annum, payable annually, each coupon being for the sum of seventy dollars, bearing serial number 18, due January 1st, 1889.

The following is a copy, as a specimen, of the coupon from bond number one:

70. The County of Perry, State of Illinois, will pay to the bearer seventy dollars on the first Monday of January, 1889, being the interest due on bond No. 1, issued to the Belleville & Southern Illinois Railroad Company.

J. CARROLL HARRISS,
88 *County Clerk.*

(The serial number, 18, is printed on the face of the coupon in different colored ink, the figures also being of large size.)

Objection by counsel for defendant on the ground that there was no power to issue the bonds.

Objection overruled.

(At the demand of counsel for defendant the entire number of coupons in suit were produced by plaintiff in the presence of said counsel and the court.)

L.

Coupons, 3 fr. Each of 19 "C. & T." Ry Bonds.

Plaintiff next offered three past-due and unpaid coupons, with serial numbers 36, 37, and 38, of the amount of thirty-five dollars each, from each of bonds numbered 3, 4, 19, 25, 48, 52, 53, 54, 55, 56, 58, 64, 65, 66, 67, 72, 73, 94, and 99, each bond being for a thousand dollars, issued to the Chester & Tamaroa Coal and Railroad Company, bearing date January 1st, 1872, and due January 1st, 1892.

The following is a copy of a specimen of these coupons, having the serial number, 36, printed in different colored ink and large figures upon its face:

COUNTY OF PERRY, }
State of Illinois. }

89 The County of Perry will pay to bearer on the 1st day of July, 1888, at the American National Exchange bank, in the city of New York, thirty-five dollars, it being six months' interest on bond No. 52, for $1,000.

CHARLES E. R. WINTHROP,
County Judge.
J. CARROLL HARRISS,
County Clerk, Perry Co.

Mr. LAYMAN: These coupons do not show what bonds they are taken from; they are simply numbered, and there is no recital to show — whom the coupons are payable.

Mr. BOWERS: We have introduced the bonds in evidence with coupons that are exact copies of those detached.

Mr. LAYMAN: May be bonds issued for another purpose, so far as we know.

The COURT: Did you detach them?

Mr. BOWERS: Yes, sir; part of them—not all of them.

The COURT: Did they come to you detached?

Mr. BOWERS: Some of them came detached; some of them were detached by us.

The COURT: I don't know that there is much in the matter, but Mr. Bowers may be sworn.

M.

Testimony of W. R. Bowers.

W. R. BOWERS sworn.

By the COURT:

90 Q. You can state whether or not these coupons, so far as you know, were detached.

A. These coupons, so far as I know and believe, are detached from Perry county bonds issued to the Chester & Tamaroa Coal and Railroad Company, a copy of which we have introduced in evidence.

Q. Did you detach some of these yourself?

A. Part of these coupons were detatched by myself. Others were sent to our firm detached, with the representation that they were detached from those bonds.

Mr. LAYMAN: I guess there is no question about their genuineness.

N.

4 Coupons from Bonds No. 57, C. & T. Ry.

Plaintiff next offered in evidence four past-due and unpaid coupons, with serial numbers 35, 36, 37, and 38, each for the sum of thirty-five dollars, and due respectively Jan. 1st, 1888, July 1st, 1888, Jan. 1st, 1889, and July 1st, 1889, all from bond number 57, issued to the Chester & Tamaroa Coal and Railroad Company, bearing date January 1st, 1872, and due January 1st, 1892, for the sum of one thousand dollars.

The following is a copy of one of these coupons, with the serial number, 35, written in different colored ink and large figures upon the face of the coupon:

COUNTY OF PERRY, }
State of Illinois, }

91 The County of Perry will pay to bearer on the 1st day of January, 1888, at the American National Exchange bank, in the city of New York, thirty-five dollars, it being six months' interest on bond No. 57, for $1,000.

CHARLES E. R. WINTHROP,
County Judge.
J. CARROLL HARRISS,
County Clerk, Perry Co.

Total Value.

Mr. BOWERS: The total value of coupons here offered in evidence by us is five thousand five hundred and sixty-five dollars.

8. Plaintiff next introduced an act passed by the General Assembly of Illinois, entitled "An act supplemental to an act entitled

An act to provide for a general system of railroad incorporations," approved November 6th, 1849, the act being as follows:

O.

Gen. Railroad Act, Nov. 6, '49.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That whenever the citizens of any city or county in this State are desirous that said city or county should subscribe for stock in any railroad company already organized or incorporated or hereafter to be organized or incorporated, under any law of the State, such city or county may and are hereby authorized to purchase or subscribe for shares of the capital stock in any such company, in any sum not exceeding one hundred thousand dollars for each of such cities or counties; and the stock so subscribed for or purchased shall be under
92 the control of the county court of the county or common council of the city making such subscription or purchase, in all respects as stock owned by individuals.

SECTION 2. That for the payment of said stock the judges of the county court of the county or the common council of the city making such subscription or purchase are hereby authorized to borrow money at a rate not exceeding ten per cent. per annum, and to pledge the faith of the county or city for the annual payment of the interest and the ultimate redemption of the principal, or, if the said judges or common council should deem it most advisable, they are hereby authorized to pay for such subscription or purchase in bonds of the city or county, making such subscription to be, drawn for that purpose, in sums not less than fifty dollars, bearing interest not exceeding ten per centum per annum: Provided, that no bond shall be paid out at a rate less than par value.

SECTION 3. The railroad companies already organized or incorporated or hereafter to be organized or incorporated under the laws of this State are hereby authorized to receive the bonds of any county or city becoming subscribers to the capital stock of such company, at par, and in lieu of cash, and to issue their bonds
93 bearing interest not exceeding ten per centum per annum for any moneys by them borrowed for the construction of their railroad and fixtures, or for the purchase of engine and cars, and for such purpose may dispose of any bonds by them received as aforesaid.

SECTION 4. No subscription shall be made or purchase or bond issued, by any county or city under the provisions of this act, whereby any debt shall be created by said judges of the county court of any county, or by the common council of any city, to pay any such subscription unless a majority of the qualified voters of such county or city, (taking as a standard the number of votes thrown at the last general election previous to the vote had upon the question of subscription under this act, for county officers,) shall vote for the same; and the judges of the county court of any county,

or the common council of any city, desiring to take stock as aforesaid, shall give at least thirty days' notice, in the same manner as notices are given for election of State or county officers, in said county, requiring said electors of said county or said city to vote upon the day named in such notices, at their usual place of voting, for or against the subscription for said capital stock which they may propose to make, and said notices shall specify the com-
94 pany in which stock is proposed to be subscribed, the amount which it is proposed to take, and the time which the bonds proposed to be issued are to run, and the interest which said bonds are to bear; or in case it is proposed to borrow money to pay such subscription, then the notices shall state the terms upon which said loan is to be effected; and the opinion of the electors shall be expressed upon their ballots "for subscription" or "against subscription," and counted and returned by the judges and clerks of elections as in other cases; and if a majority of the voters of said county or city—assuming the standard aforesaid—shall be in favor of the same, such authorized subscription or purchase, or any part thereof, shall then be made by said judges or common council. In case any election had under this act is held upon a day of a general election, then the number of votes thrown at such general election for county officers shall be the standard of the number of qualified voters, as aforesaid. No bonds shall be issued under the provisions of this act by any county or city, excepting for the amount required to be paid at the time of subscription and for the amounts of and at the time when assessments upon all the stockholders of said company shall be regularly assessed and made payable.

95 SECTION 5. This act shall take effect from and after its passage.

Approved November 6, 1849.

Plaintiff next offered an act of the General Assembly of Illinois to incorporate the Belleville & Southern Illinois railroad, approved Feb. 14, 1857, of which the following is a copy:

P.

"B. & S. Ills." R'y Charter.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That J. J. Swanwick, H. S. Ozborn, David S. Phillips, John Baird, J. M. Sullivan, W. W. Roman, J. L. Mann, and C. A. Keyes, of Perry county; J. L. D. Morrison and F. B. Fouke of St. Clair county in this State, and L. W. Ashley and Sydney Breese and their associates in and successors and assigns are hereby created a body corporate and politic, under and by the name and style of "the Belleville & Southern Illinois Railroad Company," with perpetual succession; and by that name shall be and are hereby made capable, in law and equity, to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity in this State or elsewhere; to make, have and use a

common seal, and the same to renew and alter at pleasure; and shall be and are hereby vested with all the powers, privileges and immunities which are or may be necessary to carry into effect the purposes and objects of this act. And the said company are
96 hereby authorized and empowered to locate, construct and finally complete and put in operation a railroad, from the city of Belleville, in St. Clair county, southwardly, by way of the village of Pinckneyville to some point on the Illinois Central railroad, in Perry county, deemed by the said company the most eligible; and for that purpose the company are authorized and empowered, upon the most eligible route, to lay out their railroad, for a single or a double track, to any width, not exceeding one hundred feet, through the whole length; and for the purpose of constructing embankments may take as much land as may be necessary for the proper construction and security of said railroad.

SECTION 2. The capital stock of said company shall be one million of dollars, and may be increased to two millions of dollars, to be divided into shares of one hundred dollars each; which shall be deemed personal property, and may be issued, certified, transferred and registered in such manner and at such places as may be ordered and provided by the board of directors. The immediate government and direction of said company shall be vested in five directors, who shall be chosen by the stockholders of said company, in the manner herein provided, who shall hold their office for
97 one year after their election and until others shall be duly elected and qualified; a majority of whom shall form a quorum to do business. They shall elect one of their number to be president of the company; and said board of directors shall have power to appoint all necessary clerks, secretaries and other officers necessary for the transaction of the business of said corporation, and to require any appointees to give bond and security.

SECTION 3. The said company are hereby authorized by their agents, surveyors and engineers, to cause such examinations and surveys to be made of the ground and country between the said city of Belleville and the Illinois Central railroad, aforesaid, as shall be necessary to determine the best route for the proper line or course whereon to construct their said railroad; and it shall be lawful for said company to enter upon and take possession of and use any and all such lands and real estate as may be necessary for the construction and maintenance of their said railroad:

Provided, that all lands and real estate entered upon and taken possession of and used by said corporations, for the purpose and accommodation of said railroad, or upon which the site for said railroad shall have been located or determined by the said corporation, shall be paid for by said company, in damages, if any be sustained by the owner or owners thereof by the use of the
98 same for the purpose of said railroad; and all lands entered upon and taken for the use of such corporation, which are not donated to said company, shall be paid for by said corporation, at such price as may be mutually agreed upon by said corporation and the owner or owners of said land; and in the case of no agree-

ment therefor, the price shall be estimated, fixed and recovered, in accordance with an act to amend the law condemning right of way for purposes of internal improvements, approved June 22, 1852.

SECTION 4. That if any person shall wilfully, maliciously or wantonly and contrary to law obstruct the passage of any car on said railroad or any part thereof or anything belonging thereto, or shall damage, break or destroy any of the said road or implements or buildings, he, she, or they, or any person assisting, shall forfeit and pay to said company, for each and every offense, treble the amount of damages that shall be proved before any competent court that shall have been sustained, to be sued for in the name of said company; and such offender or offenders shall be deemed guilty of a misdemeanor, and shall be liable to indictment, in the same manner as other indictments are found, in any county or counties where such offense shall have been committed; and upon conviction every such offender shall be liable to a fine, not exceeding five thousand dollars, for the use of the county where such indictment may be found, and may be imprisoned in the county jail for any time, not exceeding nine months, in the discretion of the court.

99

SEC. 5. The time of holding the annual meeting of said company for the election of directors and for the transaction of any other business by the stockholders shall be fixed and determined by the by-laws of said company; and at all meetings such stockholders shall be entitled to one vote for each share of stock, he, she, or they may own or hold, *bona fide*, in said company; and such vote may be given in person or by lawful proxy.

SEC. 6. The persons named in the first section of this act are hereby appointed commissioners, who or a majority of them are hereby authorized to open or cause to be opened subscription books for the stock of said company, at such time and places as they may think proper, and also to appoint one or more agents to open such books and receive such subscriptions. The said commissioners or their agents shall require each subscriber to pay five dollars or execute a note therefor, as they shall determine, on each share subscribed, at the time of subscribing; and whenever a hundred thousand dollars shall be subscribed the said commissioners shall call a meeting (or a majority of them shall) of the stockholders, by giving four weeks' notice in some newspaper printed in the counties of Perry and St. Clair; and at such meeting it shall be lawful for the stockholders to elect the directors of said company and transact any other business that may be deemed necessary; and when the directors are chosen the said commissioners shall deliver said subscription books, with all sums of money and notes received by them or by any agent appointed by them as commissioners, to said directors. No person shall be a director unless he shall be a *bona fide* stockholder in said company.

100

SECTION 7. That the right of way and the real estate purchased for the right of way and for other purposes by said company, whether by mutual agreement or otherwise, or which shall become the property of the company by operation of law, as in this act provided,

shall, upon the payment of the amount of money belonging to the owner or owners of said land, as a compensation for the same, or upon tendering the amount of money therefor, become the property of the said company, in fee simple, unless otherwise agreed
101 between said company and the seller thereof.

SEC. 8. That said company may take and transport upon said railroad any person or persons, merchandise or other property, by the force and power of steam or animal or other proper and competent force and power; and may fix, establish, take and receive such rates of toll for all passengers and property transported on the same as the directors shall from time to time establish; and the directors are hereby authorized and empowered to make all necessary rules, by-laws, regulations and ordinances that they may deem necessary and expedient to accomplish the designs and purposes and to carry into effect all the provisions of this act, and for the transfer and assignment of its stock.

SEC. 9. The directors of said company after the same is organized shall have power to open books at such time and places as they may deem proper for the subscription of stock, until the whole amount of capital stock shall be subscribed, or such parts and amounts thereof as they shall desire to have subscribed; and said directors are hereby authorized and empowered to take and receive subscriptions to their said capital stock on such terms and in such amounts as they may deem for the interest of the said company and
102 as they may prescribe by their by-laws and regulations from any other railroad company or corporation and from any county, city, town or village; and any such subscription shall be valid and binding upon any railroad company, corporation, county, city, town or village making the same: Provided said subscriptions shall be made in every respect subject to the provisions and restrictions of an act supplemental to an act entitled "An act to provide for a general system of railroad incorporations," approved November 6th, 1849: And provided further, said company shall be authorized to take or receive subscriptions to their capital stock payable in real estate. And all owners of real estate may pay for their subscriptions to the capital stock of said company and execute their notes with mortgage upon the whole or any part of their real estate for the security of said notes at a rate of interest to be agreed upon by said company and the said owners of real estate, not exceeding ten per centum per annum.

SEC. 10. In case it should at any time appear that an election of directors should not be made on the day on which in pursuance of this act or the by-laws of said company it ought to be made, such failure to elect shall in nowise affect the rights of said com-
103 pany, but such election shall be held at any time which may be directed by the directors.

SEC. 11. In case of the death, resignation or removal of the president, vice-president or any of the directors, at any time between the annual elections, such vacancy may be filled for the remainder of the year whenever the same may happen by the remaining directors or a majority of them: and in case of the absence of

the president or vice-president, the board of directors shall have power to appoint a president, *pro tempore*, who shall have and exercise such powers and functions as the by-laws of the said corporation may prescribe.

SEC. 12. That whenever it shall be necessary for the construction of said railroad to intersect or cross a track of any other railroad or any stream of water or water-course or road or highway on the route of said road, it shall be lawful for the company to construct their railroad across or upon the same: Provided that the said company shall restore the railroad, stream of water, water-course, road or highway thus intersected or crossed to its former state or in a sufficient manner not materially to impair its usefulness.

SEC. 13. That said company shall have power and it is hereby made lawful for said company to unite its railroad with any
104 other railroad or railroads now constructed or being constructed or which may be hereafter *be* constructed within this State, which may cross or intersect the same or be built at either end thereof, upon such terms as may be mutually agreed upon between the said company and any other company so connecting: and for that purpose full power is hereby given to said company to make and execute such contracts with any other company or companies as shall secure the objects of such connections.

SEC. 14. That it shall be lawful for the directors to require payment of the sum subscribed to the capital stock, at such times and in such proportion and on such conditions as they shall deem proper, under penalty of the forfeiture of all previous payments thereon; and shall give notice of the payments thus required and of the time when and the place or places where the same are to be made at least thirty days previous to the time of the payment of the same, in some public newspapers printed in Belleville or Pinckneyville.

SEC. 15. That said company is hereby authorized, from time to time to borrow such sum or sums of money as may be necessary for completing and furnishing or operating their said
105 railroad, and to issue and dispose of their bonds in denominations of not less than five hundred dollars bearing a rate of interest not exceeding ten per cent. per annum for any amount so borrowed, and to mortgage their corporate property and franchises or convey the same by deed of trust to secure the payment of any debt contracted by said company for the purposes aforesaid; and the directors of said company may confer on any bondholder of any bond issued for money borrowed as aforesaid the right to convert the principal due and owing thereon into stock of said company at any time not exceeding ten years from the date of said bond, under such regulations as the directors of said company may see fit to adopt; and all sales of such bonds that may be made at less than their par value shall be good and valid and binding upon said corporation, as if such bonds had been sold for the full amount thereof.

SEC. 16. Every conductor, baggage master, engineer, brakeman and other servant of said corporation employed in a passenger train or

at a station for passengers shall wear upon his hat or cap a badge, which shall indicate his office, the initial or style of the corporation. No conductor or collector, without such badge, shall
106 demand or be entitled to receive from any passenger any fare, toll or ticket, or exercise any of the powers of his office; and no other of said officers or servants, without such badge, shall have any authority to meddle or interfere with any passengers, his baggage or property, in forming passenger trains. Baggage or freight or merchandise or lumber cars shall not be placed in the rear of passengers cars; and if they or any of them shall be so placed and any accident shall happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement and the conductor or engineer of the train shall each and all be held guilty of a misdemeanor and shall be punished accordingly.

The certificate of the secretary of said company, under the corporate seal thereof, shall be received in all courts of justice and elsewhere as evidence of the regular organization of said company under its charter and of any act or order of the board of directors of said company.

SEC. 17. That the width of said road shall be determined by the directors of said company, within the limits prescribed by the first section hereof. The said company shall carry and transport the mail of the United States on such terms as may be agreed and all such freights and passengers as may be offered, if required
107 so to do, on the terms usual with like railroad companies.

SEC. 18. This act shall be deemed a public act and is hereby so declared, and shall be favorably construed for all purposes herein expressed or declared in all courts and places whatsoever: Provided that said railroad company shall commence the construction of said railroad within five years and complete the same within eight years from the passage of this act.

SEC. 19. This act to take effect and be in force from and after its passage.

Approved Feb. 14, 1857.

Q.

Registration Act of '69.

Plaintiff also offered the following sections from "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16, 1869:

SEC. 2. And the county clerk or other proper officer, upon the issuing of the bonds in payment of said railroad debt, shall make a registration thereof in a book to be kept for that purpose in his office, showing the date, amount, number, maturity and rate of interest of such bonds and upon the subscription or donation to what railroad the same was given. And the said bonds and bonds
108 heretofore issued and still unpaid, in order to receive the benefits of this act, shall be registered by the holder thereof, at the office of the auditor of public accounts, who shall cause the

same to be registered in a book kept for that purpose. Such registration shall show the date, amount, number, maturity and rate of interest of such bond, under what act and by what county, township, city or town issued; and the auditor shall, under his seal of office, certify upon such bond the fact of such registration, for which registration and certificate the auditor shall be entitled to a fee of one dollar from the holder of each bond.

SEC. 7. And it shall not be lawful to register any bonds under the provisions of this act or to receive any of the benefits or advantages to be derived from this act, until after the railroad in aid of the construction of which the debt was incurred shall have been completed near to or in such county, township, city or town and cars shall have run thereon; and none of the benefits, advantages or provisions of this act shall apply to any debt unless the subscription or donation creating such debt was first submitted to an election of the legal voters of said county, township, city or town, under the provisions of the laws of this State, and a majority of the legal voters living in said county, township, city or town were in favor of such aid, subscription or donation; and any county, township, city or town shall have the right, upon making any subscription or donation to any railroad company, to prescribe the conditions upon which such bonds, subscriptions or donations shall be made, and such bonds, subscriptions or donations shall not be valid and binding until such conditions precedent shall have been complied with. And the presiding judge of the county court, or the supervisor of the township, or the chief executive officer of the city or town, that shall have issued bonds to any railway or railways, immediately upon the completion of the same near to, into or through such county, township, city or town as may have been agreed upon, and the running of the cars thereon, shall certify under oath that all the preliminary conditions in this act required to be done to authorize the registration of such bonds and to entitle them to the benefits of this act have been complied with, and shall transmit the same to the State auditor with a statement of the date, amount, number, maturity and rate of interest of such bonds, and to what company and under what law issued; and thereupon the said bonds shall be subject to registration by the State auditor, as hereinbefore provided.

Finally, plaintiff offered the following amendment to the constitution of the State:

R.

Amendment to Const. of State of Ills.

No county, city, town, township, or other municipality shall ever become subscribers to the capital stock of any railroad or private corporation or make donation to or loan its credit in aid of such corporation: Provided, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been

authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption.

Plaintiff here rested.

Court adjourned to 1¾ o'c. p. m.

Defendant's Evidence.

1.

Testimony W. S. D. Smith.

Defence.

W. S. D. SMITH sworn.

Direct by Mr. LAYMAN:

Q. Will you look at this order introduced by Mr. Sanders and state what it is?

A. It is a true copy of all the orders made by the county board of Perry county on that subject.

Q. Are you county clerk?

A. Yes, sir.

111 Q. Have you carefully examined the record as to all the orders relating to the Belleville & Southern Illinois Railroad Company?

A. Yes, sir.

Q. How long have you been in that office?

A. Since December, '65.

Q. This copy introduced by the plaintiff, is it a copy of all and the only records of the county of Perry relative to the issue of bonds to the Belleville & Southern Illinois Railway Company?

A. Yes, sir.

Q. You state that after making the most thorough and diligent search?

A. Yes, sir.

Q. Now, examine that paper. Have you made thorough and careful examination of all the records in Perry county relative to the issue of bonds to the Chester & Tamaroa Coal and Railroad Company?

A. Yes, sir.

Q. And is that paper you have in your hand a full and perfect copy of all and the only orders of Perry county relative to that matter?

A. Yes, sir; of all and the only orders relative to that election, February 19th, '70. A former order had been made for an election to subscribe stock for the county to that railroad.

112 Objection to any evidence with reference to any former orders with respect to any election that failed to carry. We are trying to recover on orders that we have established in this transcript from records of the county. It is on those orders and the bonds thereby authorized that we are trying to recover.

The COURT: Let him state that there were two former orders for an election which failed to carry.

A. That had no reference to this election.

Objection overruled.

Q. You stated that election failed to carry—that former election ordered on the subject?

A. Yes, sir.

Q. With reference to the election of Feb. 19th, '70, the witness says these are all and the only orders, and you base your suit as to the Chester & Tamaroa bonds entirely on the election of February 19th, 1870?

Mr. SANDERS: Yes, sir; the evidence which is shown in this transcript.

The COURT: That shows that an election was held on that day.

2.

Testimony of Don Anstadt.

DON ANSTADT sworn.

Direct by Mr. LAYMAN:

Q. How long have you lived in Duquion, Perry county, Illinois? Did you live there in 1869?

A. Yes, sir.

Q. Lived there ever since?

A. Yes, sir.

113 Q. State whether the Belleville & Southern Illinois Railway Company ever located machine shops at Duquoin.

A. They didn't.

Objection to this evidence on the ground that it is immaterial, for the reason that the rule of law is that where there are officials whose duty it is to certify as to the performance of conditions precedent, like any election or any other preceding condition, and where they certify to commercial obligations like these bonds or coupons, their certificate that these conditions precedent have been complied with estops the municipality from alleging that those conditions have not been complied with. Such officials in this case are the county clerk and county judge of Perry county, who have made their certificate that all conditions precedent were performed, and they cannot contradict the certificate of their officials made in 1871, when they certified to matters with regard to which they were authorized to certify.

The COURT: The objection will be overruled and the evidence will be heard.

Exception by counsel for plaintiff.

Q. You state that machine shops were not located there by this company.

A. No, sir.

Q. Where were they located?

114 A. In East St. Louis.

Q. Do you know how many hands those shops employ?

A. A hundred and twenty to a hundred and fifty men.

Q. Do you know about the probable cost of the machine shops?

A. No; I do not, but it would run up probably in the neighborhood of a hundred and fifty thousand dollars.

Q. In 1868 and '69 there was a large farming country around there and a large coal-field there?

A. Yes, sir.

Cross-examination by Mr. SANDERS:

Q. What means have you of knowing the amount invested in East St. Louis?

A. I have no means of knowing—just a supposition.

Q. Do you know of your own knowledge that the machine shops are there?

A. Yes, sir.

Mr. LAYMAN: You state that large quantities of coal are mined at Duquoin?

A. Yes, sir.

3.

Mr. Smith Recalled.

Mr. SMITH recalled.

Direct by Mr. LAYMAN:

115 Q. I will ask how many voting places there were in Perry county at the time of this election held November third, 1868—the general election of that year.

A. Seven.

Q. State their names.

Objection.—What election is that?

Q. It is the last election previous to the one in question in this suit.

A. The names of the voting precincts at that time are Duquoin, Tamaroa, Beaucoup, Pinckneyville, Grand Cote, Lost Prairie, and Southwestern.

Q. I will ask you if the poll books of that election were returned to your office.

A. Yes, sir.

Q. Were you in office at the time they were returned?

A. Yes.

Q. Are these certified copies of those poll books?

A. Yes, sir.

Q. Are they the certified poll books—certified copies of all and the only poll books of that election?

A. Yes, sir.

Q. We have produced them, if the court please, for the sole purpose of showing the number of votes cast at that election.

116 The COURT: It will encumber the record. Can't you agree as to what it shows?

Mr. SANDERS: We object to it as evidence, but we can agree as to what it shows. Let the clerk and Mr. Bowers together determine what that transcript shows and state it.

(After consultation between the witness and Mr. Bowers over the transcript.)

A. This shows a total of votes cast at that election of twenty-four hundred and ninety-five.

Objection.—You can put down that number, then, as a statement of what the transcript shows and our objection to it as evidence.

The COURT: It is understood, then, that the poll books of the general election of November third, 1868, in Perry county, Illinois, are offered, and that they show a total vote cast at that election in that county in the precincts which have been named of twenty-four hundred and ninety-five.

Objection overruled.

Q. I will ask you to state if you were in the office of the clerk of Perry county when the poll books of July third, 1869, were returned.

A. Yes, sir.

Q. Were the same precincts in the county then as at the November election of the year before?

A. The same precincts, with the same names.

Mr. SANDERS: What election was that you are inquiring about?

117 Q. For the Belleville & Southern Illinois Railway Company. Did they return the poll books from each of the precincts after that election?

A. Yes, sir.

Q. Are these papers which I now show you copies of all and the only poll books of that election of July third, 1869?

A. Yes, sir.

Q. We now offer this transcript of these poll books.

Mr. SANDERS: What is the object?

The COURT: I suppose the object is to show that there was not in favor of the bonds a majority of all the votes cast at the preceding election.

Q. That is the object.

Objection by plaintiff's counsel to the evidence.

The COURT: Do you want to introduce the entire transcript?

Q. Yes, sir; the statute of '45 requires that when there is an election held the judges shall return the poll books to the county clerk, and make certificate as to how many votes were cast for each candidate, and sign it. In Duquoin precinct and one other—Southwestern—the judges and clerks made certificates as to how

much the proposition received—how much for and against—but made no certificate at the end of that at all. Hence the
118 proposition to take stock in the Belleville & Southern Illinois railroad received only about nine hundred votes, when it should have received thirteen hundred.

Mr. SANDERS: No certificate of election returned?

Q. There are blanks there, but they are not signed.

Mr. SANDERS: The election was held, then, but not properly certified to.

Q. I contend that the only evidence you have as to how the vote went is the certificate of the judges and clerks.

The COURT: Let the certified copy go in, then. It must speak for itself. It goes subject to objection.

Objection overruled. Exception by plaintiff's counsel.

Mr. Smith's Cross-exam.

Cross-examination by Mr. SANDERS:

Q. State what advantages you had for knowing that these returns are accurate—first, as to your being in the office.

A. I occupied the position of deputy county clerk for two terms—December, '65, to December, '73—and since I have been clerk.

Q. Now, state if those returns here copied were accepted as the returns from those precincts at that time.

A. Yes, sir.

Q. State if they were in any way acted upon as the returns
119 of that election with reference to officers or otherwise.

A. They were—by the clerk—with reference to the election of county officers, and so forth, accepted as the basis.

Q. They were accepted and acted upon with reference to the officials elected?

Objection.—There were no officials. Just the question of subscription.

A. I wish to be understood as testifying that any action the officials took was simply the action of the clerk in taking and filing the returns—the returns of that election.

Q. Was not that election acted upon in the subscription of stock by the county?

A. I would not like to say in regard to that.

Q. Weren't you there and don't you know when this subscription was made by the board?

A. Yes, sir.

Q. Did this question come up then in any way as to the legality of the returns?

A. I don't think the question was raised as to the legality of these poll books.

Q. Would have to have an abstract of the votes?

A. There was a question as to the number of votes that should have been required as a basis. I remember there was a question as

to the propriety of the board issuing a hundred thousand of stock to the company when a hundred and fifty thousand was the
120 amount voted upon.

Q. An abstract was there with returns from every precinct?

A. Yes, sir.

Mr. Smith's Redirect.

Redirect by Mr. LAYMAN:

Q. I will ask you if the poll books, of which these are copies, are the only returns made by the officials of that election.

A. Yes, sir.

Q. Do you know whether any abstract was made of that election of July third, '69?

A. Don't know.

Q. Have you searched the office diligently?

A. I have searched the office diligently to find an abstract of that election, but do not find any.

The COURT: The poll books, with the certificates and all, go in to speak for themselves.

Q. Will you now get the poll books of the election of November, '69? I will ask you if you were county clerk at the time of that election.

A. Yes, sir.

Q. I believe you have stated that you were deputy there and clerk ever since. What precincts were there in November, '69?

A. The same that I have mentioned.

Q. Same names?

121 A. Yes, sir.

Mr. BOWERS: Was it a general or special election?

Q. General election of county officers in November, '69.

The COURT: In the same way you may let him state the result of that election without offering the poll books.

A. The number of persons voting at that election was two thousand and twenty-four.

Objection by plaintiff's counsel to the evidence.

Q. Here now is a copy of the poll books of the election held for the issue of bonds to the Chester & Tamaroa Coal and Railroad Company on February 19th, 1870. We propose to offer an abstract of the vote at that election, stating that there were nine hundred and eighty-six votes then cast in favor of the proposition and ninety-one votes against it.

Objection.—Let that go in with our objection to it as evidence.

The COURT: Better put in the poll books, but it is admitted over the objection that they show so much for and so much against.

Mr. SANDERS: Very well.

The COURT: The poll books are offered and objected to, but it is allowed that they show nine hundred and eighty-six votes for the subscription and ninety-one votes against it.

122 Objection overruled. Exception by plaintiff's counsel.

Q. These are copies of all and the only poll books returned at that election?

A. Yes, sir.

Q. There is no return from Duquoin precinct and I want to prove that there was no election there.

4.

Testimony of Jacob Mesmore.

JACOB MESMORE sworn.

Direct by Mr. LAYMAN:

Q. You resided in Duquoin on February 19th, 1870, at the time the election was held for the Tamaroa subscription?

A. Yes, sir.

Q. Was there any vote taken there or not?

A. No, sir.

Q. No poll established?

A. No, sir.

Cross-examination by Mr. SANDERS:

Q. Were you there any time before that election was held?

A. Yes, sir; been there since '58.

Q. Any election notices put up?

A. I couldn't say for certain, but I think there were.

Q. Did you see any?

A. It has been so long that I couldn't state whether I saw any or not.

123 Q. Did you go to any voting precinct yourself?

A. No, sir: there wasn't none.

Q. Did you know there were any voting precincts open?

A. I knew there was none open in Duquoin.

Q. What is the habit there—voting at one precinct?

A. There was at that time.

Q. Where do they have that voting place?

A. At Duquoin.

Q. In a hall or any particular place?

A. No, wherever they could get a place to hold the election in.

Q. Were you around then?

A. I was on the street; heard talk in regard to it.

Q. What was the talk?

A. The talk was that there was no judges to hold the election.

Q. No judges?

A. No polls open to hold the election.

Q. No judges appointed to hold the election?
A. I believe there was.
Q. Were they there?
A. They weren't there; didn't materialize.
Q. Why didn't the citizens select judges in the ordinary manner?
A. We didn't want any.

124 Mr. LAYMAN: You say but one voting place in Duquoin precinct at that time.

A. That's all.
Q. Who were the judges appointed to hold that election?
A. Been so long now I can't remember.
Q. Do you know that there were any?
A. I think so; I heard them talking about it; the judges didn't materialize; in fact we were all laughing about it; the judges didn't appear that day.
Q. Didn't appear to preside?
A. Yes, sir.
Q. Do you know whether Mr. Fountain (?), Mr. Flack, and Mr. Happy were judges at that election?
A. I know them, but I don't know whether they were appointed or not.
Q. How large a population had Duquoin at that time?
A. Between fifteen hundred and two thousand—might have been a little more or a little less.
Q. Are you certain nobody voted that day for the subscription?
A. Yes, sir.

5.

D. W. Dry's Testimony.

D. W. DRY sworn.

Direct by Mr. LAYMAN:

Q. Where did you live at that time?

125 A. Lived in two miles of Duquoin; lived there ever since I was born.

Q. You were sheriff of the county in February, '69?
A. Yes, sir; elected in '68.
Q. Where is your voting place?
A. Duquoin.
Q. Were you in Duquoin the day the Chester & Tamaroa election was held in February, '69?
A. Yes, sir; I was there that day.
Q. State if there was any election in Duquoin that day.
A. There was no election. I was sheriff at the time, doing business at Pinckneyville; stayed there the night before. I was very anxious the proposition voting a subscription to that road should not carry, and I went to Duquoin to vote against it; when I got there they told me, a number of them, that no polls were open. I looked about—thought they were joking me—but I found no polls

opened at all. I feel confident no election was held there whatever. I felt very anxious to vote against the proposition and I went to Duquoin for no other purpose but to do so.

Cross-examination by Mr. SANDERS:

Q. How long did you stay there?
A. I think I stayed all the evening.
Q. You saw no one voting?
A. No, sir; no one voting.
126 Q. Saw no polls opened?
A. No, sir.
Q. Were you at the usual voting place?
A. Yes, sir; vote at some office window or house usually on Main street, and I was at every place where they usually hold an election.
Q. Couldn't have been any election that day without your knowing it?
A. I think not.
Q. I would like to ask you what was the number of votes cast at the last prior election before this?
A. Before this election that we didn't hold?
Q. Yes, sir.
A. That would be a hard question to remember eighteen or twenty years. I could only answer from hearing the poll books.
Q. What was the population of Duquoin at that time?
A. I could hardly recollect that; probably I never saw a statement at that time what it was. I lived outside the corporation, within two miles of what the city was then; it was only a village then, a large precinct of our county.

The COURT: Goes south to the Jackson county line, I believe.

Q. Who composed the county court at that time?
127 A. I think Judge Winthrop, and probably Judge Primm, was associate, and probably Ervin.
Q. Will you state where these gentlemen lived who composed the county court?
A. Judge Winthrop lived about three miles east of Duquoin, Judge Ervin lived in the northwestern part of the county; Judge Primm lived east of Pinckneyville—two and a half or three miles northeast of Pinckneyville.

Mr. LAYMAN: I will now offer the charter of the Chester & Tamaroa Coal and Railroad Company, which is found in volume two of the Private Laws of 1869, on pages 824 to 828; also an amendment to the charter, which is found on page 859 of the same volume. Both the act and the amendment were passed the same day.

DEFENDANT'S EXHIBITS.

6.

Poll Books, 1869, July 3d, Election.

1. Copy of poll books of election held July 3rd, 1869, in Perry county, Illinois, upon the question of subscription to the stock of the Belleville & Southern Illinois railroad.

STATE OF ILLINOIS, } ss:
Perry County, }

I, W. S. D. Smith, county clerk of Perry county, Illinois, do hereby certify that I have made complete and correct copies of the poll books of the several election precincts of the said county of
128 the election held in said several precincts on the 3d day of July, A. D. 1869, as said poll books appear on file in my office, said several precincts beings as follows:

Tamaroa precinct, Duquoin precinct, Beaucoup precinct, Pinckneyville precinct, Grand Cote precinct, Lost Prairie precinct, and Southwestern precinct, being in all seven (7) precincts, being the entire number of precincts in said county at that time; and that copies, separately certified by me, are arranged in the above order and hereto attached.

Witness my hand and the seal of the county court of
[SEAL.] said county, at Pinckneyville, this eighteenth day of June, A. D. 1889.

W. S. D. SMITH,
County Clerk.

Poll book of an election held at the office of Henry Clay, Esq., in Tamaroa, in the county of Perry and State of Illinois, on the 3d day of July, A. D. 1869.

Henry Clay, Allen Parlier, and Charles E. R. Winthrop, judges of the election.

Attest: S. H. Alman, G. H. Kenney, clerks of the election.

Affidavit of Judge of Election.

STATE OF ILLINOIS, } ss:
Perry County, }

I, Henry Clay, do solemnly swear that I will perform the
129 duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

HENRY CLAY.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

HENRY CLAY, *N. P.*

STATE OF ILLINOIS, }
Perry County, } ss:

I, Allen Parlie, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

ALLEN PARLIE.

Sworn to and subscribed before me this 3rd day of July, A. D. 1869.

HENRY CLAY, *N. P.*

STATE OF ILLINOIS, }
Perry County, } ss:

I, C. E. R. Winthrop, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

CHARLES E. R. WINTHROP.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

HENRY CLAY, *N. P.*

STATE OF ILLINOIS, }
Perry County, } ss:

I, S. H. Alman, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud,
130 deceit, and abuse in conducting the same.

S. H. ALMAN.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

HENRY CLAY, *N. P.*

STATE OF ILLINOIS, }
Perry County, } ss:

I, G. H. Kenney, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

G. H. KENNEY.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

HENRY CLAY, *N. P.*

Tamaroa.

List of Voters at an Election held on the 3d Day of July, A. D. 1869, at the Town of Tamaroa, in the County of Perry and State of Illinois.

No.	Names.	No.	Names.
1	L. Eaton.	55	W. L. Farmer.
2	R. M. Galloway.	56	S. A. Beard.
3	L. L. Mason.	57	Thomas Sanders.
4	L. O. Norton.	58	J. M. Blakemore.
5	C. E. Thurman.	59	John B. Ward.
6	H. H. Rives.	60	D. C. Barber.
7	Shadrick James.	61	Jacob Guthertch (not reg.).
8	N. J. Galloway.	62	A. T. Lisenby.
9	C. A. Wilderman.	63	J. R. Burlison.
10	David Williams.	64	D. L. Benson.
11	C. Matt.	65	Enoch Jones.
12	W. C. Wilmore.	66	J. G. Thompson.
13	John Lore.	67	William Berger.
14	Stephen Lore.	68	J. H. Burlison.
15	Henry Tinsley.	69	J. W. Hawkins.
16	David Johnson.	70	Alex. Degraugh.
17	Nat. Vaughn.	71	T. M. Sams.
18	F. M. Middleton.	72	J. J. Johnson.
19	Isaac Lee.	73	Samuel White.
20	Sam. Long.	74	W. H. Osborn.
131		75	Halpin John.
21	John Miller.	76	Bob Nicholson.
22	Williams Farthing.	132	
23	C. Corgan.	77	G. N. Taffee.
24	C. A. Spencer (not reg.).	78	John W. Corgan.
25	William Christian.	79	Samuel Robinson.
26	W. Simms.	80	Patrick Sullivan (not reg).
27	E. H. Price.	81	Gid. McFarlin.
28	William Gamble.	82	James Ford.
29	William Corgan.	83	John Owens (not reg'd).
30	Peter Lee.	84	S. M. Pierce.
31	W. J. Dingle	85	J. Theodore Enderly.
32	Joseph Stedland.	86	John Mumbower.
33	S. E. Lipe.	87	James W. Gibson (not reg'd).
34	W. D. Clark.	88	Stephen Long (not reg'd).
35	Charles Gerrick (not reg.).	89	R. C. Macintosh.
36	Henry McQuarter.	90	H. W. Adams.
37	L. S. Norton.	91	S. H. Almon.
38	C. Fralish.	92	John Gamble.
39	John Hester.	93	W. C. Stockton.
40	W. T. Caton.	94	Charles Clark.
41	C. S. Norton.	95	H. H. Jones.
42	James Campbell (not reg.).	96	William Wade.
43	Samuel Shaffer.	97	B. C. Fisher.
44	Ira Bardness.	98	C. E. R. Winthrop.
45	E. Thompson.	99	D. W. Sharp.
46	G. Baughman.	100	—— Allier.
47	A. Burlison.	101	W. H. Willoughby.
48	M. R. Ing.	102	Richard Jones, not reg'd.
49	J. L. Stockton.	103	John A. Moore.
50	Thomas Myers.	104	W. D. Singleton.
51	William Morrow.	105	Wm. Young.
52	G. S. Rice.	106	John M. Ing.
53	Ezra Wood.	107	H. J. Cox.
54	Henry Nevils.	108	M. L. Jones.

List of Voters at an Election, etc.—Continued.

No.	Names.	No.	Names.
109	Benj. Kinsey.	167	James Sullivan.
110	Wm. H. Lee.	168	J. K. P. Morison.
111	B. G. Roots.	169	David Allen.
112	Henry Rice.	170	D. M. Crow.
113	W. S. Rice.	171	John Simpson.
114	C. F. Halsey.	172	J. H. Blazier.
115	G. Watson.	173	Andrew Johnson.
116	Jonas Keck.	174	Sampson C. Law.
117	L. K. Witcher.	175	Johnson S. Winthrop.
118	J. C. Kinsey.	176	Milton Corgan.
119	E. V. Pierce.	177	Joseph Winder.
120	R. R. Johnson.	178	David J. Smith, not reg'd.
121	J. Boudinott.	179	J. H. Billingsley.
122	Henry Miller.	180	John Marshall.
123	John Taylor.	181	J. R. Hawkins.
124	W. S. Gee.	182	G. W. Bacon.
125	R. N. Crane.	183	George Vaughn.
126	John Johnson.	184	Sidney McCaw.
127	J. Kirk.	185	J. R. Keith.
128	Alex. Thomson.	186	W. Dair.
129	Soloman Thompson.	187	Thomas Lane.
130	Ephraim Miller.	188	Benjamin Hammack.
131	Michael Goss.	134	
132	Harmon Wearer.	189	A. P. Adams.
133		190	Hiram Bardiness.
133	Christopher Ing.	191	Henry Lester.
134	C. M. Higbey.	192	M. C. Hawkins.
135	Samuel Eaton.	193	H. A. Debenport.
136	Isaac Bardiness.	194	John D. Lee.
137	R. J. Eaton, not reg'd.	195	William Quner.
138	T. B. Bann.	196	Henry McCaudey.
139	Samuel Neely.	197	J. H. Thompson.
140	John Donley.	198	J. C. Sanders.
141	Pinkey Young.	199	Isaac Tackett.
142	Leroy Eaton.	200	George H. Kinney.
143	Edward Mecum.	201	Azariah Pugh.
144	T. P. Harrison.	202	Ed. Barker.
145	P. L. Staton.	203	John H. Loucks.
146	W. R. Brownlee.	204	Jacob Hester.
147	Jason R. Burlison.	205	E. H. Simmons.
148	G. M. Hutchins.	206	Stephen Nash.
149	Eli Huster.	207	Henry Mason.
150	J. Lathrop.	208	Clay Mumbower.
151	J. W. Larlier.	209	M. W. Johnson.
152	S. M. King.	210	C. H. Billingsley.
153	John Hyde.	211	Z. P. Curlee.
154	Thomas Simmons.	212	Richard Lee.
155	Samuel Bair.	213	Jacob Ong.
156	Oscar Crank.	214	H. Patrick.
157	Tilla King.	215	James Newsome.
158	J. H. Spann.	216	P. White.
159	W. G. Heape.	217	Thomas Nolan.
160	L. Heape, Jr.	218	James Mecum.
161	Wm. Anderson.	219	J. H. George.
162	A. W. Higs.	220	John M. George
163	Joseph Smith.	221	N. Holt.
164	Jacob Miller.	222	Joseph Gamble.
165	W. H. Hoffman.	223	Wilburn Greenwood.
166	C. E. R. Winthrop.	224	J. F. Darroh.

List of Voters at an Election, etc.—Continued.

No.	Names.	No.	Names.
225	H. Johnson.	284	Wm. Massey.
226	Robert Gamble.	285	Wm. Hammack.
227	George W. Billingsley.	286	Charles Dudley.
228	A. J. Bowman.	287	Elijah Harris.
229	Thos. Dawson.	288	Caleb S. Blakemore.
230	John McCombs.	289	Wm. N. Bottomley.
231	Thos. Hammack.	290	J. B. Curlee.
232	Pryor B. Lee.	291	Wm. E. Hester.
233	J. E. Campbell.	292	Logan Hamilton.
234	John Mecum.	293	C. S. Swan.
235	Ezekiah Woods.	294	Joseph Short.
236	S. M. Brown.	295	J. B. McCan.
237	George W. Daniels.	296	Isaac W. McMillion.
238	C. A. Parlier.	297	J. M. Welch.
239	R. M. Wheatly.	298	C. F. Spilman.
240	Noah Hampleman.	299	T. A. Lorelady.
241	H. F. Hampleman.	300	E. P. Simmons.
242	C. W. Linsey.	136	
243	B. F. Montague.		
244	William Noble.	301	John F. Griffiths.
135		302	J. B. Swan.
		303	M. B. Hawkins.
245	F. Rupp.	304	Henry Clay.
246	Thos. Tucker.	305	Wm. Walls.
247	G. Watts.	306	Frederick Spurgeon.
248	P. F. Staton.	307	Louis Hammack.
249	Rich A. Hempleman.	308	B. Lipe.
250	Joseph Marstimer.	309	Jonas Aster.
251	Samuel Harriss.	310	Lafayette Harris.
252	John P. Logan.	311	Wm. M. Eaton.
253	John Lane.	312	C. S. Moore.
254	N. B. Terell.	313	Isaac Padrick.
255	B. Watts.	314	Robert Heap.
256	W. A. Haines.	315	W. P. Lorelady.
257	Joseph Shelpman.	316	Townsend Blanchard.
258	L. C. Brownlee.	317	S. M. Richey.
259	A. M. Hutchings.	318	B. F. Kelsey.
260	J. M. Caldwell.	319	Harris Morrow.
261	John A. McCuillon.	320	William Lawhead.
262	E. M. Richmond.	321	Samuel Myers.
263	Vinevard Gillim.	322	N. D. Curlee.
264	John H. Gilliam.	323	Henry C. Bardmess.
265	Nevo West.	324	Nicholas Guy.
266	S. B. Beggs.	325	Wm. Taylor.
267	S. B. Wells.	326	Cham Hudson.
268	S. W. Mumbower.	327	E. Voss.
269	Sanford Daniels.	328	W. T. Jones.
270	M. S. Jones.	329	H. E. Kellsy.
271	W. A. House.	330	R. C. Lisenby.
272	Lewis Childs.	331	H. S. Lindsey.
273	Thos. Ingles.	332	Asberry Mecum.
274	E. Burroughs.	333	John A. Gee.
275	J. M. Hawkins.	334	Wm. H. Lorelady.
276	H. West.	335	Jehugh Heaps.
277	John Reddick.	336	C. P. Christian.
278	E. R. Dudley.	337	Campbell Piles.
279	Robert R. Hale.	338	F. J. Gillispie.
280	Giles N. Gilliam.	339	Boaz Ford.
281	R. T. Warrell.	340	Allen Kelsey.
282	Wm. Goodman.	341	F. M. Uhles.
283	F. A. Wells.	342	Wm. H. Cunningham.

Votes cast.

For the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville and Southern Illinois Railroad Company, one hundred and forty-three (143).

137 Votes cast.

Against the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville and Southern Illinois Railroad Company, four (4).

Votes cast.

For the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Company, three hundred & thirty-three (333).

Votes cast.

Against the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Co., four (4).

Votes cast.

For the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, one hundred and seventy-nine (179).

Votes cast.

138 Against the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, four (4).

On the back of the foregoing poll book is the following endorsement: Filed July 6th, 1869. L. T. Ross, clerk.

Clerk's Certificate.

STATE OF ILLINOIS, }
Perry County, } *ss:*

I, W. S. D. Smith, clerk of the county court of Perry county, Illinois, do hereby certify that the attached and foregoing sheets, nine (9) in number, contain *are* a full, true, and complete copy of the poll book of an election held in Tamaroa precinct, in said county, on the 3d day of July, A. D. 1869, now on file in my office.

And I certify that the said copy is also a true copy of the oaths of the judges and clerks of election, which are written (or printed) in said poll book, and of the list of voters written in said poll book, and of the entries of the judges and clerks of said election, which are written (or printed) in said poll book, showing the number of

votes received by each proposition voted upon in said election, as the same appears on file in my office.

139 In testimony whereof I have hereunto set my hand and the seal of said court, at Pinckneyville, this eighteenth [SEAL.] day of June, A. D. 1889.

W. S. D. SMITH, *Clerk.*

Duquoin.

Poll book of an election held at the Duquoin precinct, in Duquoin, in the county of Perry and State of Illinois, on the 3d day of July, A. D. 1869.

B. A. Howard, S. V. Norton, S. C. Blakslee, judges of the election. Attest: R. A. Wheatley, Charles P. Richards, clerks of the election.

Affidavit of Judge of Election.

STATE OF ILLINOIS, } ss:
Perry County, }

I, S. V. Norton, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

S. V. NORTON.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ASHLEY McCREERY, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, B. A. Howard, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud,
140 deceit, and abuse in conducting the same.

B. A. HOWARD.

Affirmed to and subscribed before me this 3d day of July, A. D. 1869.

ASHLEY McCREERY, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, S. C. Blaksley, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

S. C. BLAKSLEE.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ASHLEY McCREERY, *J. P.*

STATE OF ILLINOIS, }
Perry County, } ss:

I, R. A. Wheatley, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same

R. A. WHEATLEY.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ASHLEY McCREERY, *J. P.*

STATE OF ILLINOIS, }
Perry County, } ss:

I, Charles P. Richards, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

141 CHARLES P. RICHARDS.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ASHLEY McCREERY, *J. P.*

List of Voters at an Election held on the 3d Day of July, A. D. 1869, at the Duquoin Precinct, in Duquoin, in the County of Perry and State of Illinois.

No.	Names.	No.	Names.
1	Samuel M. Thrift, N. R.	27	Norris Hugley.
2	Horates Swartes.	28	J. A. Hamman, N. R.
3	W. J. Smith.	29	Abram Inveld, N. R.
	J. M. Bayless.	30	Frederick Damer.
5	T. F. Mercer.	31	Mike Shumaker.
6	John McLean.	32	Adam Shoemaker.
7	George D. Clark.	33	Adam Hatley.
8	J. D. Cole.	34	Levi Cook.
9	Wm. Blackburn.	35	Wm. Bollby.
10	E. J. Scott.	36	E. Nason.
11	J. H. Miller.	37	Noell Lemen, N. R.
12	P. N. Pope.	38	Louis Stryker.
13	M. P. Memen.	39	C. W. Hall, N. R.
14	O. H. Burton.	142	
15	G. W. Carpenter.		
16	Turner, C.	40	Joseph Bischof.
17	James Hodges.	41	Andrew Piles.
18	Wm. Reid.	42	Wm. H. Fountain.
19	Thos. Briggs.	43	S. L. Plummer.
	Wm. Goddard.	44	Webster Happy.
21	Richard Brookings.	45	Wm. Welden.
	John Derlin.	46	Fred. Ulrich.
23	A. W. Brazier.	47	Charles Bigger.
24	Thos. H. Burgess.	48	Wm. Clark.
25	Joseph W. Clement.	49	W. J. Burgess.
26	W. B. Pfefer.	50	Melton Reddington.

List of Voters at an Election, etc.—Continued.

No.	Names.	No.	Names.
51	James McCullough.	109	Thos. D. McElrain.
52	Wm. McKinzie.	110	Andrew Martin.
53	D. B. Van Drurer.	111	John Whitehead.
54	Silas Hester.	112	James Purdell.
55	David Kavanaugh.	113	Edwin Hayes.
56	James Robinson, Jr.	114	Wm. Edell.
57	B. S. Gitt.	115	Alexander Martin, N. R.
58	G. C. Williams.	116	James Baird.
59	James Borthrord.	117	E. M. Harriss.
60	D. D. Hathfield.	118	Wm. Briggs.
61	L. Staxsinger.	119	John T. Beem.
62	Dick Hill.	120	Daniel Thrailkill.
63	D. H. Wildeman.	121	George R. Kirchner.
64	J. M. Combs, N. R.	122	James Wheatley.
65	Joel Eubanks.	123	M. H. Stoughtenberg.
66	J. D. McCullum.	124	Charles Lewis.
67	J. W. Mosey.	125	Edward Straughn.
68	Charles Seikman.	126	Wm. Blackburn, Jr.
69	Wm. N. Rupert.	127	H. Nunes.
70	David Crawford.	128	E. Jones.
71	A. C. Stockwell, H. R.	129	Mat. Humphrey.
72	John Browman.	130	Henry N. N. Ferguson.
73	John Williams, N. R.	131	C. H. Troupe.
74	Thos. Newman, N. R.	132	W. H. Yarnell, Jr.
75	Augustus Davis.	133	George Leisham.
76	John Corbett, N. R.	134	R. R. Towns.
77	J. J. Van Kuren.	135	J. J. Higgins, N. R.
78	J. W. Taylor.	136	E. S. Wheatley.
79	William Huggins.	137	Henry Faulkner.
80	J. L. McLean.	138	James S. Horner.
81	Robert Monk.	139	Richard Elston.
82	G. F. Pettit.	140	N. P. Tarr.
83	Preston Smith.	141	Ban Kier, N. R.
84	Wm. Ruffner.	142	Henry Hogn.
85	M. L. Genung.	143	J. M. Johnson.
86	N. V. Brandon.	144	John Bolan.
87	Robert A. Anderson.	145	Robert Booth.
88	J. R. Teague.	146	John Baird.
89	C. McElrain.	147	S. R. Painter.
90	James Anderson, N. R.	148	Henry Grinders.
91	John Sedden.	144	
92	A. Wilson, Jr.	149	J. R. Lee, N. R.
93	John H. Brown.	150	Job Fillmore.
94	George Abbot.	151	Matthew Cook, I.
143		152	John Winn.
95	John Golden.	153	Henry R. Pomeroy.
96	Robert Spence.	154	E. P. Delano.
97	Joe Cramer.	155	John Chapman.
98	John Harsey.	156	Enoch Eaton.
99	John Anderson.	157	Andrew J. Harriss, N. R.
100	Charles Horn.	158	Isaac M. Neeley.
101	Robert Cochran.	159	Owen Reddington, N. R.
102	B. F. Pope, Sr.	160	George Hyde.
103	Thomas Tijon.	161	James Miller.
104	J. B. Maclain.	162	Samuel Ogden.
105	C. G. Matthews.	163	John Perry.
106	John Hill.	164	John Goran, N. R.
107	P. & D. Mulkey.	165	T. J. Smith, N. R.
108	Wm. Dudley.	166	J. B. Rodgers.

List of Voters at an Election, etc.—Continued.

No.	Names.
167	H. S. Smith.
168	E. Pyle.
169	Robert G. Reese.
170	J. A. Williams.
171	P. Walsh.
172	M. H. Ross.
173	E. Lype.
174	A. L. Ross.
175	Robert Baxter.
176	Peter Kessler.
177	Joseph White.
178	G. N. Hinckley.
179	G. W. Halter.
180	James Harley.
181	Charles Wieber.
182	Henry Wilson, N. R.
183	J. G. Mangold.
184	J. B. Herrick.
185	D. Vansel.
186	J. M. Kelly.
187	John Harris.
188	Charles Zeigler.
189	George Whitehead.
190	Nelson McCullom.
191	Henry Williams.
192	John Ford.
193	Thomas Stuart.
194	Samuel Scotts.
195	Robert Scherds, Sr.
196	John A. Bowlin.
197	G. W. Brashaw.
198	Alic Turnbull.
199	John McLain.
200	Ira Gordon.
201	Robert Ward.
202	Allen Hinckley.
203	Peter Vogel.
204	Wilson Morrow.
145	
205	Joseph McCullough.
206	Thomas Parks.
207	Chas. Genung.
208	C. W. Wicker.
209	John Huntley.
210	Josiah Wood.
211	Fred. Shipworth.
212	L. Powell.
213	Peter Sneider.
214	David Heywood.
215	Wm. Needham.
216	D. S. Van Nest.
217	E. R. Pomeroy.
218	Jubal Burton.
219	E. P. Pettis.
220	George D. Pugh.
221	A. R. Pugh.
222	A. R. Stacy.
223	S. H. Clement.
224	Robert J. Wheatley.
225	A. J. Alden.
226	W. C. Nusem.
227	S. J. Moore.
228	Russell Tuthill.
229	J. G. Shaw, N. R.
230	Richard French.
231	Frans Ayde, N. R.
232	Cornelius Goforth.
233	J. W. Lowe.
234	J. Messmore.
235	Thos. Gillard.
236	M. B. Lawrence.
237	William Walker.
238	H. M. Harris.
239	Thos. Kelley.
240	Phillip Reese.
241	S. E. Evans.
242	N. R. Durham.
243	Moses French.
244	L. F. Parsons.
245	John R. Sandford.
246	E. H. Hatch.
247	John Myers.
248	Frank Shean.
249	Wm. Tait.
250	W. H. Fonda, N. R.
251	A. O. Genung.
252	George Spenser.
253	Thomas Baxter.
254	Edward Hayes.
255	Walter Nichols.
256	Henry Green.
257	Ben. Jazer.
258	Richard Driver.
259	B. F. Wright, N. R.
260	Wm. H. Stockwell, N. R.
146	
261	Philip Ross.
262	Abijah Meyers.
263	Joseph Cruse, N. R.
264	L. F. Gill.
265	Hennet Arterberry, N. R.
266	John Stanhouse.
267	James Gill.
268	Samuel French.
269	W. O. Hovey.
270	G. W. Palmer.
271	H. J. Davis.
272	T. Derrington.
273	D. W. Dry.
274	A. J. Smith.
275	T. L. King.
276	Thos. Helston.
277	John Dushain.
278	Wm. T. Cochran.
279	A. Wagner.
280	Robert Marshall, N. R.
281	R. Berry.
282	Nathan Silkwood.

List of Voters at an Election, etc.—Continued.

No.	Names.	No.	Names.
283	E. H. Church.	341	Joseph Needham.
284	A. Bishof.	342	Wyley Lype.
285	F. H. Kennedy.	343	George Greenwood.
286	Cornelius Bidwell.	344	Bryan McConnel.
287	John Robertson.	345	L. Reese.
288	James A. Quillman.	346	John H. Webbs.
289	Joseph Harris, Rev.	347	Henry Linzee.
290	R. T. C. Keller.	348	—— Bailey, N. R.
291	H. B. Hamilton.	349	F. Wells.
292	James B. White.	350	Giles Taylor.
293	J. W. Franklin.	351	Thos. Gill.
294	A. J. Bishof, N. R.	352	H. W. Johnson.
295	Peter Hosey.	353	Wm. Jackson.
296	Wilson House.	354	W. J. Winters.
297	Wm. Pruitt.	355	John Gillbaird, N. R.
298	H. H. Terry, N. R.	356	F. M. Freeman.
299	James T. Buchanan.	357	A. H. Tulleford, N. N.
300	James P. Wolf.	358	J. S. Eubank.
301	Hiram Piles.	359	J. M. Revels.
302	James Huntley.	360	Samuel Arthur.
303	John Lewis.	361	A. Ward.
304	Uriah Purdell.	362	Francis Kettler.
305	Madison Terry.	363	David Morgan.
306	J. H. Graham.	364	Thomas McHugh.
307	Joseph Hubbard.	365	R. Grey.
308	J. B. Slawson, N. R.	366	I. J. McCullom.
309	M. T. Williams.	367	M. Stanhouse.
310	John Smith.	368	E. B. Kelley.
311	Jacob Hysey.	369	Wm. Black.
312	Wm. Day.	370	T. Stafford.
313	Thos. Green.	371	C. Wearin.
314	Nelson Montgomery.	372	Coradan Pyatt.
315	Wm. Yarnell, Sr.	148	
316	Jesse W. Johnson, N. R.	373	D. W. Wheatley.
147		374	J. W. Thomas, N. R.
317	Irving Anderson.	375	James Grimes, N. R.
318	Sylvester Adams.	376	Charles Rogers.
319	West Eaton.	377	Wm. Dunn.
320	T. F. Broughton, N. R.	378	Charles Dunn.
321	W. P. Burbank.	379	George Wolf.
322	Charles Wineberger.	380	N. W. McLain, N. R.
323	Wm. Williams.	381	Henry Perry.
324	James Thornton.	382	J. A. Davis, N. R.
325	Robert Bolan.	383	Wm. Golightly.
326	Robery Joblin.	384	A. J. Center.
327	W. J. Night.	385	James Ellison.
328	John F. Sanders.	386	Adolph Keyser.
329	Henry Parrish.	387	S. G. Nevils.
330	John Kaul.	388	G. W. Williams.
331	G. W. Spurgeon.	389	D. R. Bidwell.
332	Nicholas Snyder.	390	Conrad Kunkle.
333	Samuel McIlrain.	391	James Oxley.
334	E. Onstott.	392	M. W. Wilburn.
335	William Setra, (?) R.	393	Henry Morgan.
336	Lyman Pyle.	394	Timothy White, N. R.
337	S. R. Dunham.	395	Joseph N. Slawson.
338	Primas Whitmore.	396	James Simmons.
339	George Maxwell.	397	L. Ogburn.
340	Louis Dyer.	398	J. P. Cowens.

List of Voters at an Election, etc.—Continued.

No.	Names.	No.	Names.
399	John Harris.	457	D. W. Erwin.
400	F. Lewis.	458	G. R. Wilson.
401	Fred Roeder.	459	Hugh Dougherty, N. R.
402	John H. Gregory.	460	W. F. Humphrey.
403	Charles N. Whitney.	461	A. C. McElrain.
404	M. Wanzling.	462	J. E. McLain.
405	George Burbank.	463	B. Joplin.
406	John Freeman.	464	G. S. Smith.
407	Wm. Baldwin.	465	James Ball, N. R.
408	J. T. Milligan.	466	De Witt Slawson.
409	W. S. Clark.	467	Wm. Greenwood.
410	Wm. L. S. Johns.	468	Thos. Goddard.
411	Thos. McConel.	469	Frank Spurgeon.
412	Robert S. Leming.	470	E. L. Stevenson.
413	Phillip Kennedy, N. R.	471	John T. McCuer.
414	Anderson Williams.	472	James H. Gregory, N. R.
415	Daniel Gill.	473	Hosie Harris.
416	Franklin Booker.	474	T. C. Watkins.
417	James Carrol.	475	H. P. Smith.
418	John Reddington, N. R.	476	John Daniels.
419	S. D. Goodale.	477	George Hileman.
420	David Ingram, N. R.	478	Patrick Davis.
421	Pat. Ban, N. R.	479	Wm. Deering.
422	J. C. Williams.	480	George E. Williamson.
423	L. L. Daniels.	481	Benj. Abernathy, N. R.
424	Stephen D. Lewis.	482	Thomas N. Jones.
425	George Snowden, N. R.	483	Charles Wilson.
426	David Wright.	484	R. C. McBirney, N. R.
427	James Orr.	150	
428	J. D. Callagan.	485	Andrew Frazier.
149		486	Wm. Wren.
429	John Wilson.	487	Charles Argraves.
430	William Colman, N. R.	488	Louis Wells.
431	Thos. Johnson.	489	Wm. G. Harris.
432	A. B. Kennedy.	490	Wm. Pyles.
433	Phineas Arnold.	491	Thos. Flemming.
434	Wm. Carrahan.	492	Cox Archibald.
435	Robert Reaves.	493	Joseph Pyle.
436	Joseph Nevils.	494	Morros Foley.
437	Peter Haggler.	495	Robert Rankin, N. R.
438	Hiram Burbank.	496	J. P. Stuart.
439	Isaac Stackhouse.	497	L. R. Parker.
440	John M. Bolan.	498	Jaspar Wil iams.
441	N. S. Leighton.	499	A. J. Williams.
442	Michael Wilson.	500	Edward Church.
443	Jabez Burton.	501	W. R. McCuliom.
444	Angus Hinesman, N. R.	502	Wm. H. Holmes.
445	Joseph Sattel, N. R.	503	Alex. Furlough.
446	H. B. Skinner.	504	Wm. Wilkinson.
44	Peter Rining, N. R.	505	G. I. Sweetland.
448	Wm. Snyder.	506	A. S. Palmer.
449	Joseph Sneider, N. R.	507	A. Reese.
450	Joseph Stanforth.	508	Wm. Wolf.
451	R. C. Clark.	509	A. J. Smith.
452	J. Hartz Miller.	510	Joseph Wilkinson.
453	George Schaffer, N. R.	511	John A. Keller.
454	J. H. Stafford.	512	James David, N. R.
455	A. C. Brorgings.	513	Benedict Weysneinger.
456	Green Smith.	514	A. L. Heywood.

List of Voters at an Election, etc.—Continued.

No.	Names.
515	Wm. Thomas.
516	Alex. Anderson.
517	Thos. Roberts.
518	S. Freidenstine.
519	Henry Burbank.
520	Carlisle Brashaw.
521	Wm. Dunn.
522	Rufus Radbury.
523	Nelson Mead.
524	Ed. Murphy.
525	T. P. Berryhill.
526	T. J. Hansford.
527	T. M. Humphrey, N. R.
528	Gilbert Thomas.
529	John Smith.
530	Henry McMann, N. R.
531	Jacob Marstellar, N. R.
532	A. G. Grere.
533	Walter Camel.
534	James White.
535	George Stickels.
536	John Harvey, N. R.
537	Joseph Whitehead, N. R.
538	Henry Amber, N. R.
539	John Warer.
540	Joseph Bookstarer.
151	
541	Marion Perry.
542	John McMurty.
543	Marselus Brook, N. R.
544	Joseph Stidd.
545	Joseph Brookshaw.
546	John Stevens, N. R.
547	Fred. Modsley.
548	Edward Moberly.
549	Watt Elston.
550	A. J. Whittington.
551	Joseph Ogburn.
552	David Pyle.
553	Levi Clemine.
554	R. J. Barber.
555	A. J. McDonald.
556	A. McCreery.
557	Wm. R. Gass.
558	Orin Ross.
559	Charles Morgan.
560	James A. Troute.
561	S. J. Davis.
562	John Lee, N. R.
563	Andrew Boll.
564	James P. Kelley.
565	J. H. Moberly.
566	W. G. Anderson.
567	G. W. Huff.
568	Ambrose Seliger.
569	Archibald Wilson, Jr.
570	Robert Montgomery.
571	Fred. Ingleman.
572	Joseph Monk.
573	Christopher Young.
574	J. C. Rash.
575	G. W. Wall.
576	George Young, Jr.
577	James Thomas.
578	E. Mayor.
579	Charles Scholtz.
580	John D. Henmann.
581	J. M. Stagg.
582	Moses Reeves.
583	Thos. Foster.
584	Wm. Fitzgerald.
585	E. Andrews.
586	Patrick McMahan, N. R.
587	William Elison.
588	Wm. A. Nevill.
589	Wm. C. Tucker.
590	J. B. Haggard.
591	Adams Ischurch, N. R.
592	H. S. Lemen.
593	G. W. Rogers, N. R.
594	Christian Merchant.
595	M. B. Jelly.
596	George W. Chitteser.
152	
597	H. H. Taylor.
598	Thos. Pyatt.
599	John Rogers, N. R.
600	P. T. Haggard.
601	G. H. Haggard.
602	George W. Kelley.
603	F. Kaler.
604	W. W. Webb.
605	Louis A. Winters.
606	J. W. Winters.
607	W. K. Whitlow.
608	Charles F. Linzee.
609	M. A. Laughfoon.
610	Louis Meyers.
611	F. J. McLain.
612	Michael Farley, N. R.
613	John Manley.
614	Thos. Kincaid.
615	Louis Hamilton.
616	W. J. Troy.
617	Wm. Weeks.
618	Amos Teatrick.
619	M. L. Matthews.
620	Henry Nelson.
621	C. McCure.
622	Alex. Man Kuren.
623	Stephen Wisler.
624	George W. Vansel.
625	Frank Munt.
626	S. L. Sibbett, N. R.
627	R. A. Wheatley.
628	J. W. Willeford.
629	Charles P. Richards.
630	E. A. Howard.

List of Voters at an Election, etc.—Continued.

No.	Names.
631	S. V. Morton.
632	L. C. Blakslee.
633	Wm. Collins.
634	R. H. Manier.
635	Michael Bradley.
636	Eli McCullom.
637	George McKinney.
638	Benj. Merchant.
639	Frank Shean, Jr., N. R.
640	J. R. Carter.
641	John Hafley.
642	Wm. Holderfield.
643	David Shanks.
644	G. S. Smith.
645	John W. Oliver.
646	L. B. Skinner.
647	H. F. Blakeslee.
648	Dr. John R. Elstun.
649	Wm. Hayes.
650	James Page.
651	J. J. Flak.
652	S. P. Groves.
153	
653	Daniel Stein.
654	James Franks.
655	George W. Peck.
656	Isaac Slater.
657	Robert Hartley.
658	A. Adkins.
659	E. McElvain.
660	Samuel L. Brown.
661	Fred. Hahn, N. R.
662	Lecher C. Williams.
663	T. B. Kelley.
664	Louis P. Wells.
665	J. B. Adams.
666	W. E. Norton, N. R.
667	Harvey J. Davis.
668	Abraham Lype.
669	John Thorwell.
670	F. G. Keith.
671	S. P. Bingham.
672	Wm. B. Eaton.
673	Willis Lawrence, N. R.
674	Thos. Wolf.
675	Robert Holt.
676	Frederick Holt.
677	Benjamin Sprague.
678	C. W. Stanton, N. R.
679	Herman Knauer.
680	Phillip Kern.
681	James White (druggist).
682	S. J. Ross.
683	John Draper.
684	Henry Woodward.
685	Thos. Hickman.
686	Jogn Ogleby.
687	Wm. Usher.
688	P. J. Higgins, N. R.
689	W. W. Lyman.
690	Frank Shelah.
691	George Cherey.
692	John Hamel.
693	Hanson Young.
694	G. M. Haggard.
695	Wm. McIntosh.
696	Charles Whitney.
697	Charles Bahre.
698	James M. Cox, N. R.
699	John Kreeher.
700	M. E. Orton.
701	Peter House.
702	James M. Brown.
703	Elam Silkwood.
704	Jacob Knutz.
705	George Harsy.
706	Louis Struck.
707	John Wohlwen, N. R.
708	John Bruer.
154	
709	John Reis.
710	Simon Piles.
711	Wm. N. Arnold, N. R.
712	Andrew Eisenhauer.
713	Edwin Burbank.
714	John E. Flegal.
715	I. F. Davis.
716	Michael J. Schrader.
717	George Young, Jr.
718	Wm. Cavins, N. R.
719	Alex. Hansen.
720	R. W. Gunn.
721	Harvey McElrain.
722	John Donahoe.
723	Josiah Harris.
724	Jacob Weise.
725	Jesse Deas.
726	Jonathan McCullom.
727	W. H. Davis, N. R.
728	R. H. Hagler, N. R.
729	E. G. Keelin.
730	Joshua King.
731	Wilson Wells.
732	Jacob Webb.
733	Zachariah Kames.
734	John Bradley, N. R.
735	N. B. Teatrick, N. R.
736	B. F. Pope, Jr.
737	J. N. Keller.
738	Isham Purdy.
739	John Ambler.
740	P. F. Keith.
741	Joseph Soloman, N. R.
742	T. G. Williams.
743	C. C. Plumley, N. R.
744	W. P. Williams.
745	Eli Hype.
746	Jacob Seibird.

List of Voters at an Election, etc.—Continued.

No.	Names.	No.	Names.
747	George Amos, N. R.	790	P. D. Mifflin.
748	Louis Christmann, N. R.	791	H. C. McCreery, N. R.
749	W. R. Roberts.	792	Thos. Wilson, N. R.
750	T. G. Robinson.	793	A. B. Reid.
751	A. Provart.	794	Marian Lipe, N. R.
752	Z. R. Provart.	795	Thos. H. Howells, N. R.
753	George Gardner, N. R.	796	Joseph Bailey, N. R.
754	John Bullmer.	797	John Cunningham, N. R.
755	Gilbert Lype.	798	Peter Foster.
756	J. H. Partridge.	799	James Flinn.
757	Milton Hoffer.	800	James Collier.
758	Wm. Arms.	801	Wm. Elstun.
759	A. L. Teel.	802	J. G. Melroy, N. R.
760	Isaac H. Young.	803	Louis Glassburn.
761	G. D. Collins, N. R.	804	Francis Doyle.
762	James Bartley.	805	Edward Jakel, N. R.
763	W. H. Carner.	806	James Dick.
764	John Linzee.	807	W. E. Dunn.
155		808	S. C. Parks.
		809	Andrew House, N. R.
765	J. D. Goucher.	810	Alex. House.
766	Marches Montgomery, N. R.	811	Charles Outhouse.
767	Wm. Miller.	812	Truman Thing.
768	Lafayette Sanders, N. R.	813	A. Cole.
769	J. D. Simpson, N. R.	814	Peter Hardsock.
770	Allen Carr.	815	Robert Schevals, Jr.
771	T. P. Sanders, N. R.	816	James Robertson, Sr.
772	Thos. Pyle.	817	S. W. Clark.
773	John Dunn.	818	N. G. Buchanan.
744	David Dunn.	819	Fred. Schneider.
775	John Mann.	820	Albert Schneider, N. R.
776	Samuel P. Eakin.		
777	Christian Deshner.	156	
778	Soloman Goodrich.		
779	George Mann.	821	James Bills.
780	Jasper Horn.	822	James Horton, N. R.
781	E. C. C. Provart.	823	August Cammert, N. R.
782	J. W. Provart.	824	J. W. Sanders.
783	Michaelmas Bamburger.	825	A. C. Anderson.
784	A. Davis, N. R.	826	Quincy McCreery.
785	Richard Stubbling.	827	E. N. Smith.
786	E. H. Lacey.	828	M. A. Floyd, N. R.
787	A. J. Blakeslee.	829	A. M. West, N. R.
788	George T. Wearian, N. R.	830	John Stanhouse.
789	Gilbert Woodward, N. R.	831	Adam Wise.

At an election held in the Duquoin precinct, county of Perry, State of Illinois, at the usual place of voting in said precinct, on the 3d day of July, 1869, the following propositions for the county of Perry to take stock in the railroads therein mentioned received the number of votes annexed to and set opposite the respective propositions, as follows, to wit:

The proposition for the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville & Southern Illinois Railroad Company received eight hundred and sixteen votes.

The proposition against the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville & Southern Illinois Railroad Company received five votes.

The proposition for the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa
157 Coal and Railroad Company received thirty votes.

The proposition against the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Company received two hundred and eighty-seven —.

The proposition for the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company received thirty votes.

The proposition against the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company received two hundred and sixty-six votes.

B. A. HOWARD,
L. C. BLAKSLEE,
S. V. NORTON,
Judges of the Election.
R. A. WHEATLEY,
CHARLES P. RICHARDS,
Clerks of the Election.

On the back of the foregoing poll book is the following endorsement: Filed July 6th, 1869. L. T. Ross, cl'k.

158 *Clerk's Certificate.*

STATE OF ILLINOIS, }
Perry County, } *ss:*

I, W. S. D. Smith, clerk of the county court of Perry county, Illinois, do hereby certify that the attached and foregoing sheets, sixteen (16) in number, contain *are* a full, true, and complete copy of the poll book of an election held in Duquoin precinct, in said county, on the 3d day of July, A. D. 1869, now on file in my office.

And I certify that the said copy is also a true copy of the oaths of the judges and clerks of election, which are written (or printed) in said poll book, and of the list of voters written in said poll book, and of the entries of the judges and clerks of said election, which are written (or printed) in said poll book, showing the number of votes received by each proposition voted upon in said election, as the same appears on file in my office.

[SEAL.] In testimony whereof I have hereunto set my hand and the seal of said court, at Pinckneyville, this eighteenth day of June, A. D. 1889.

W. S. D. SMITH, *Clerk.*

159 *Beaucoup.*

Poll book of an election held at the house of Frank Bonel, in Beaucoup precinct, in the county of Perry and State of Illinois, on the 3d day of July, A. D. 1869.

Francis Graf, Daniel Cross, Frank P. Bonl, judges of the election. Attest: Lindsey Benedict, J. Monroe Rice, clerks of the election.

Affidavits of Officers of Election.

STATE OF ILLINOIS, } ss:
County of Perry, }

I, Daniel Cross, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

DANIEL CROSS.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

LINSEY BENEDICT, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, Francis Graf, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my
160 ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

FRANCIS GRAF.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

LINSEY BENEDICT, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, Frank P. Bonl, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

FRANK P. BONL.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

LINSEY BENEDICT, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, Linsey Benedict, do solemnly swear that I will perform the duties of clerk f this election according to law and the best of

my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

LINSEY BENEDICT.

161 Sworn to and subscribed before me this 3d day of July, A. D. 1869.

J. MONROE RICE.

STATE OF ILLINOIS, }
Perry County, } ss:

I, J. Monroe Rice, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

J. MONROE RICE.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.
LINDSEY BENEDICT, *J. P.*

List of Voters at an Election held on the 3d Day of July, A. D. 1869, at the House of Frank P. Boul, in Beaucoup Precinct.

No.	Names.	No.	Names.
1	O. H. McCarver.	26	J. D. Willis.
2	John McCarver.	27	John Reidelberger.
3	Zachariah Cross.	28	Thos. Cross.
4	Carter T. Pile.	29	John Martin.
5	Robert Luke.	30	Wm. Hitchings.
6	H. J. Rudelberger.	31	Joshua Cross.
7	J. B. Murphy.	32	David F. Taylor.
8	Daniel Cross.	33	John W. Hutchings.
9	Frank P. Boul.	34	James Peyton.
10	Francis Graf.	35	Wm. A. Hutchings.
11	Lindsey Benedict, Sr.	36	Casper Stackert.
12	J. Monroe Rice.	37	Peter Spohn.
13	John D. Roundtree.	38	Matthew Hickman.
14	Christian Reidelberger.	39	George Ballheimer.
15	Richard P. Todd.	40	James Taylor.
16	Frederick Troester.	41	Riding Taylor.
		42	Edward Taylor.
162		43	Isaac Marlow.
		44	Wm. Cross.
17	J. B. Gryer.	45	Louis Taylor.
18	Winfield Stilley.	46	Jacob Dillinger.
19	W. N. Metcalf.	47	Francis Herzog.
20	James King.	48	Edward Stule.
21	Wm. King.	49	Wm. McKinstry.
22	John Benedict.	50	Robert Boggs.
23	T. W. Edens.	51	Wm. Morgan.
24	James C. Muse.	52	Joel Hults.
25	G. L. T. Payton.	53	Robert Williams.

Votes cast.

For the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville & Southern Illinois Railroad Company, —.

163 Votes cast.

Against the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville & Southern Illinois Railroad Company, —.

Votes cast.

For the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Company, —.

Votes cast.

Against the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal & Railroad Company, —.

Votes cast.

For the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, —.

Votes cast.

Against the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, —.

On the back of the foregoing poll book is the following endorsement: Filed July 6, 1869. L. T. Ross, cl'k.

164 *Clerk's Certificate.*

STATE OF ILLINOIS, } ss.:
Perry County, }

I, W. S. D. Smith, clerk of the county court of Perry county, Illinois, do hereby certify that the attached and foregoing sheets, four (4) in number, contain *are* a full, true, and complete copy of the poll book of an election held in Beaucoup precinct, in said county, on the 3d day of July, A. D. 1869, now on file in my office.

And I certify that the said copy is also a true copy of the oaths of the judges and clerks of election, which are written (or printed) in said poll book, and of the list of voters written in said poll book, and of the entries of the judges and clerks of said election, which are written (or printed) in said poll book, showing the number of votes received by each proposition voted upon in said election, as the same appears on file in my office.

In testimony whereof I have hereunto set my hand
[SEAL.] and the seal of said court, at Pinckneyville, this eighteenth day of June, A. D. 1889.

W. S. D. SMITH, *Clerk.*

165 *Pinckneyville.*

Poll book of an election held at the Pinckneyville precinct, at the court-house, in the county of Perry and State of Illinois, on the 3d day of July, A. D. 1869.

J. D. Hamilton, J. H. Harriss, J. P. Campbell, judges of the election.

Attest: E. H. Lemen, M. C. Edwards, clerks of the election.

Affidavits of Officers of Election.

STATE OF ILLINOIS, }
County of Perry, } ss:

I, J. D. Hamilton, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

J. D. HAMILTON.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

CHAS. H. ROE,
Cir. Clk Perry Co., Ill.

STATE OF ILLINOIS, }
Perry County, } ss:

I, John H. Harris, do solemnly swear that I will perform
166 the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

JOHN H. HARRIS.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

CHAS. H. ROE,
Cir. Clk Perry Co., Ill.

STATE OF ILLINOIS, }
Perry County, } ss:

I, John Campbell, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

JOHN P. CAMPBELL.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

CHAS. H. ROE,
Cir. Clk Perry Co., Ill.

STATE OF ILLINOIS, } ss:
Perry County, }

I, E. H. Lemen, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same

E. H. LEMEN.

167 Sworn to and subscribed before me this 3d day of July, A. D. 1869.

CHAS. H. ROE,
Cir. Clk Perry Co., Ill.

STATE OF ILLINOIS, } ss:
Perry County, }

I, M. C. Edwards, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

M. C. EDWARDS.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

CHAS. H. ROE,
Cir. Clk Perry Co., Ill.

List of Voters at an Election held on the 3d Day of July, A. D. 1869, at the Courthouse, in Pinckneyville Precinct.

No.	Names.	No.	Names.
1	J. E. Swan.	24	F. M. West.
2	C. Godwin.	25	Henry Milhouse.
3	D. A. Hoag.	26	Wm. Wildey.
4	E. C. Eaton.	27	George Kirkbridge.
5	Harmon Stanton.	28	Soloman Lackey.
6	G. W. Clark.	29	Woodford Polley.
7	H. M. Purcell.	30	J. C. Doughty.
8	J. P. Sterling.	31	W. G. Leslie.
9	J. W. Craig.	32	W. R. Hoggins.
10	Thomas Whitney.	33	Samuel King.
168		34	James Ritchie.
		35	B. W. Jones.
11	John Qualls.	36	J. P. McCan.
12	R. H. Eaton.	37	Edmond Dry.
13	Charles Song.	38	James Huggins.
14	Fred. Apple.	39	Dedrich Funk.
15	Richard Gosney.	40	J. B. King.
16	A. Edwards.	41	Daniel Bell.
17	Thos. Turner.	42	J. T. Christian.
18	G. W. Rial.	43	Wm Owens.
19	Wm. Marlow.	44	J. M. Kunzey.
20	S. S. Harbison.	45	A. D. Gosney.
21	Jacob Opp.	46	Henry Opp.
22	J. B. Davis.	47	W. Scott Densmore Smith.
23	E. Hoffman.	48	Samuel Carter.

List of Voters at an Election, etc.—Continued.

No.	Names.	No.	Names.
49	S. J. Taylor.	107	R. O. Thompson.
50	Wm. McCandless.	108	John Boyd.
51	N. S. McClay.	109	Jesse Arnet.
52	George Lust.	110	John Davis.
53	E. B. Smith.	111	Vollentine McClurken.
54	J. C. Milligan.	112	Samuel Wilson.
55	Isaac Hill.	113	Thomas Polley.
56	Wm. G. Brown.	114	J. Carroll Harriss.
57	R. G. Williams.	115	Reuben House.
58	J. C. Brown.	116	J. M. Sullivan.
59	Phillip Gruner.	117	John Arnet.
60	J. H. Schulze.	118	Wm. Thompson.
61	Jordan Harriss.	119	Henry Williams.
62	Henry Bangert.	120	R. T. Whitley.
63	E. W. Logan.	121	Louis Trefls.
64	J. R. Jones.	122	Hugh Simpson.
65	George Roenhield.	170	
66	A. D. Hurd.	123	J. D. Day.
169		124	John Rusk.
67	J. F. Baldridge.	125	John Brown.
68	J. A. Wall.	126	John B. Eaton.
69	E. V. Rushing.	127	P. S. Wilks.
70	Hilard Price.	128	Moses Dry.
71	Henry Driemeyer.	129	Fred. Miller.
72	Wm. Malone.	130	Phillip Hilt.
73	T. J. Hickman.	131	E. B. Haggard.
74	Jacob Kunz.	132	H. S. Brown.
75	Wm. C. Murphy.	133	T. P. Sullivan.
76	J. S. Ragland.	134	A. A. Kinzy.
77	Andrew Robbison.	135	Joseph Allen.
78	Matthew Schneider.	136	John Christian.
79	N. H. Maxwell.	137	David Parks.
80	Wm. B. Taylor.	138	Paul Dry.
81	C. L. Casterline.	139	W. G. Wilson.
82	Wm. Skelley.	140	Charles Hollman.
83	George Miller.	141	D. G. Lynch.
84	John Underfer.	142	Henry Miller.
85	Conrad Emling.	143	A. S. Malone.
86	Greyel Purcell.	144	Ignitue R. Artelt.
87	J. H. Thompson.	145	Joseph Artelt.
88	George Eagle.	146	A. E. French.
89	M. M. Marlow.	147	Charles Thornsberry.
90	Samuel Marlow.	148	Thomas Bradfield.
91	Robert Fallon.	149	Wm. R. Eaton.
92	Adam Ceiser.	150	Wm. A. Logan.
93	J. L. Murphy.	151	Peter Decker.
94	George Taylor.	152	Wm. Dremire.
95	Jefferson Thornsberry.	153	Cyras Murphy.
96	Wm. K. Murphy.	154	J. B. Milligan.
97	John R. Right.	155	Samuel Burns.
98	Jacob Derringer.	156	Urias Paschal.
99	L. T. Ross.	157	Austin Williams.
100	John Bomersine.	158	Leo F. Jenner.
101	Valentine Kolenberger.	159	Wm. Campbell.
102	Burrill Logan.	160	G. H. Haggard.
103	W. J. Magtagan.	161	L. S. Roe.
104	J. W. Wilks.	162	John G. Bischof.
105	S. C. Crmpbell.	163	Isaac Smith.
106	Samuel Benedict.	164	Charles Carver.

List of Voters at an Election, etc.—Continued.

No.	Names.
165	Hugh Campbell.
166	Erhard Meder.
167	Henry Bohm.
168	Charles Zingman.
169	G. R. Marlow.
170	J. M. O'Neil.
171	D. C. Moore.
172	R. H. Hill.
173	Wm. R. Killingsworth.
174	J. E. Ritchie.
175	Moses Classburn.
176	James P. Rial.
177	John C. Keen.
178	A. S. Hamilton.
171	
179	Benton Ozburn.
180	Thomas S. Campbell.
181	T. J. Davis.
182	Amos Smith.
183	A. M. Wilson.
184	John W. Johnson.
185	Daniel T. Shaw.
186	V. H. Thompson.
187	Wm. H. Smith.
188	A. P. Beard.
189	Samuel Pyatt.
190	Wm. Davis.
191	I. J. Pyatt.
192	George Huch.
193	Logan Prior.
194	P. R. Marlow.
195	Aaron Russell.
196	Aaron Quillman.
197	Elijah Wells.
198	Wm. Hamilton.
199	Wm. Morrison.
200	W. D. Kinzey.
201	L. P. Coleman.
202	W. H. Milligan.
203	Lemuel Coleman.
204	Morris Feltmire.
205	Sebastian Eplin.
206	James P. Brown.
207	John Milligan.
208	James T. Milligan.
209	James T. Buchanan.
210	George Buchanan.
211	Richard Dobbs.
212	John Fee.
213	Nathan Ramsey.
214	Wm. Bery.
215	Charles Gennalley.
216	Samuel D. Marlow.
217	Isam Clark.
218	John Jacobs.
219	James C. Kingsley, Sen.
220	A. B. Hogard.
221	Meredith Marlow.
222	Adam Lynch.
223	W. T. Cunningham.
224	Hugh R. Darrough.
225	Fred. Shafer.
226	Peter Bischof, Jr.
227	Gabriel Tuffs, Jr.
228	John Burk.
229	Henry Slimpert.
230	Hugh M. Brown.
231	Isaac Bigham.
232	Sanford Ballard.
233	D. B. Vansyckle.
234	F. M. Malone.
172	
235	W. S. Gladson.
236	J. E. Campbell.
237	Henry Geddes.
238	John Lacy.
239	Jas. Collins.
240	Adam Foster.
241	Simon Opp.
242	Lewis Weingarth.
243	E. D. Rushing.
244	Rob't Whitley.
245	S. G. Whitley.
246	Peter Quillman.
247	J. H. Lard.
248	H. E. Hinckley.
249	Henry Fisher.
250	George Ferguson.
251	J. L. Prim.
252	Joseph Frederick.
253	John Frederick.
254	Charles Townsend.
255	John Milligan.
256	Matthew Rule.
257	James Gladson.
258	Casper Clay.
259	Frederick Beck.
260	Frederick Mantel.
261	Frederick Reder.
262	Samuel McKelsey.
263	Levi Prosswood.
264	Frederick Berend.
265	T. B. Walker.
266	Alex. C. Brown.
267	J. J. Brown.
268	Thos. R. Cunningham.
269	Harmon Coleman.
270	Peter Purpose.
271	S. J. Gillis.
272	Fred. Jenkel.
273	John Huth.
274	Chas. Eisfelter.
275	W. S. Armstrong.
276	James H. Morrison.
277	Joseph P. Milligan.
278	M. O. Presswood.
279	Andrew Owens.
280	H. C. Lacy.

List of Voters at an Election, etc.—Continued.

No.	Names.
281	Samuel Darrough.
282	Wm. G. Brown.
283	Peter Farley.
284	Wm. Foster.
285	A. T. Hughey.
286	S. B. Wilson.
287	Daniel W. Hughey.
288	M. M. Milligan.
289	Nic. Mangin.
290	M. M. Pyatt.
173	
291	R. A. Craig.
292	Samuel Shultz.
293	Wm. Hulse.
294	David C. Brown.
295	Dora Darrough.
296	David A. Darrough.
297	Samuel D. Rule.
298	Wm. Lubbin.
299	Johny Bart.
300	Jacob Lambert.
301	Chris Weingarth.
302	P. L. Cloud.
303	Henry Ledendécker.
304	George Bloom.
305	Benjamin Jenner.
306	David Reisinger.
307	J. R. Quillman.
308	J. W. Cunningham.
309	Samuel Haggard.
310	W. C. Milligan.
311	Bryant West.
312	J. C. Nixon.
313	John Fisher.
314	Hiram Casey.
315	Bernhardt Bergler.
316	Wm. Tempner.
317	J. R. McHenry.
318	Archibald McClurken.
319	M. G. Campbell.
320	B. W. Edwards.
321	Calvin Gladson.
322	Gabriel Neffs, Sen.
323	Champion Langston.
324	Monroe Campbell.
325	J. L. Williams.
326	Solomon Morgan.
327	John Todd.
328	Wm. Kelley.
329	Lewis Young.
330	D. A. Swallows.
331	Rob't Rule.
332	John U. Tyler.
333	Ferd. Jenner.
334	F. A. Baxter.
335	Frank McQuaid.
336	Wm. McNeil.
337	John M. Brown.
338	B. P. Rizer.
339	Middleton Bigham.
340	Matthew Helvey.
341	S. B. Hamilton.
342	Jas. C. Coleman.
343	Jno. T. Bell.
344	Wm. H. Sterling.
345	J. M. Montague.
346	Francis Anderson.
174	
347	Patrick Malone.
348	Henry Helvey.
349	Conrad Gresal.
350	R. A. Davis.
351	Benj. Chappell.
352	W. W. Burk.
353	J. C. Wilcox.
354	W. Frank Trifftzs.
355	J. L. Armstrong.
356	Jas. S. Wilson.
357	Henry Ernest.
358	Chas. Ginter.
359	Andrew Kelley.
360	Lewis Ernst.
361	Henry Miller.
362	S. M. Woodside.
363	John Kellerman.
364	Thos. Wilson.
365	John M. Craig.
366	J. H. Chance.
367	W. G. Gordan.
368	Jno. D. Strait.
369	U. S. Stookey.
370	Cromwell Casey.
371	John Krinzey.
372	R. M. Davis.
373	A. J. Green.
374	Gayhart Schneider.
375	John Rule.
376	J. H. Morris.
377	Jas. C. McMillan.
378	Geo. W. Ragland.
379	Barney Wingate.
380	Rob't R. Bigham.
381	Matt. Davis.
382	Joel F. Deason.
383	T. S. Rushing.
384	Isaac Buchanan.
385	Martin Daffenberger.
386	Jonathan Hainsworth.
387	Jacob Decker.
388	J. E. Murphy.
389	Izariah Row.
390	George Naugle.
391	John McCraig.
392	W. F. Fallon.
393	J. C. Armstrong
394	Jacob Ginn.
395	Chas. H. Roe.
396	Rob't Burns.

List of Voters at an Election, etc.—Continued.

No.	Names.	No.	Names.
397	Geo. Geiser.	175	
398	Henry Schroeder.	404	Albert Vinyard.
399	Peter Hopp.	405	J. Harriss.
400	William Adkins.	406	John P. Campbell.
401	Thos. Hopp.	407	J. D. Hamilton.
402	Thos. Byar.	408	M. C. Edwards.
403	Alex. Fulton.	409	E. H. Lemen.

Votes cast.

For the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville and Southern Illinois Railroad Company, four hundred and five (405).

Votes cast.

Against the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville and Southern Illinois Railroad Company, four hundred (400).

Votes cast.

For the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Company, three hundred and eighteen (318).

176 Votes cast.

Against the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Co., —.

Votes cast.

For the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, —.

Votes cast.

Against the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, —.

On the back of the foregoing poll book is the following endorsement: Filed July 6, 1869. L. T. Ross, cl'k.

Clerk's Certificate.

STATE OF ILLINOIS, } ss.:
Perry County, }

I, W. S. D. Smith, clerk of the county court of Perry county, Illinois, do hereby certify that the attached and foregoing
177 sheets, ten (10) in number, contain and are a full, true, and

complete copy of the poll book of an election held in Pinckneyville precinct, in said county, on the 3d day of July, A. D. 1869, now on file in my office.

And I certify that the said copy is also a true copy of the oaths of the judges and clerks of election, which are written (or printed) in said poll book, and of the list of voters written in said poll book, and of the entries of the judges and clerks of said election, which are written (or printed) in said poll book, showing the number of votes received by each proposition voted upon in said election, as the same appears on file in my office.

In testimony whereof I have hereunto set my hand and [SEAL.] the seal of said court, at Pinckneyville, this eighteenth day of June, A. D. 1889.

W. S. D. SMITH, *Clerk.*

178 *Grand Cote.*

Poll book of an election held at the house known as Gabrel's store, in Grand Cote precinct, in the county of Perry and State of Illinois, on the 3d day of July, A. D. 1869.

T. S. Elliott, J. W. Rushing, John H. McKelvey, judges of the election.

Attest: James Beggs, R. S. Guy, clerks of the election.

Affidavits of Officers of Election.

STATE OF ILLINOIS, } ss.:
Perry County, }

I, John W. Rushing, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

J. W. RUSHING.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ACT. ELLIOTT, *J. P.*

179 STATE OF ILLINOIS, } ss.:
Perry County, }

I, John H. McKelvey, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

J. H. McKELVEY.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ACT. ELLIOTT, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, Thomas S. Elliott, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

T. S. ELLIOTT.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ACT. ELLIOTT, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, R. S. Gray, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of
180 my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

R. S. GRAY.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ACT. ELLIOTT, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, James Beggs, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

JAMES BEGGS.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ACT. ELLIOTT, *J. P.*

List of Voters at an Election held on the 3d Day of July, A. D. 1869, at the House known as Grabeel's Store, in Grand Cote Precinct, County of Perry and State of Illinois.

No.	Names.	No.	Names.
181			
1	James S. Huey.	15	W. P. Justice.
2	J. Q. Robinson.	16	I. W. Maxwell.
3	H. H. Elliott.	17	David Magill.
4	Patrick O'Reilly.	18	John M. Peters.
5	John O'Reilly.	19	Archibald Beggs.
6	M. N. West.	20	John Kerr.
7	Peter Dermond.	21	Nathaniel Gordon.
8	James C. Elliott.	22	James R. McKelsey.
9	William Morris.	23	John F. Moore.
10	John Beggs, Sen.	24	Eliza Stewart.
11	Samuel Huey.	25	John M. Allen.
12	James Dixon, Sen.	26	James McClerkin.
13	John C. Dixon.	27	Giles Wells.
14	J. P. Smith.	28	Hugh Boyle.
		29	William Guy, Jr.

List of Voters at an Election, etc.—Continued.

No.	Names.	No.	Names.
30	Robert Woodside.	60	Edward Fullerton.
31	George McCormick.	61	Samuel Holliday.
32	James McCormick.	62	John Justice.
33	John M. Woodside.	63	James H. Carlisle.
34	David J. Woodside.	64	George Lyle.
35	Thomas Johnson.	65	Rob't M. Leslie.
36	George Mulligan.	66	Garin Cunningham.
37	Matthew Holliday.	67	T. S. Maxwell.
38	John Gascoin.	68	Joseph Craig.
39	Christopher O'Reilly.	69	William Craig.
40	Patrick Marion.	70	Alexander Craig.
41	M. G. Maxwell.	71	Joseph P. Craig, Jr.
42	R. H. Allen.	72	Moses Wilson.
43	William Allen.	73	Alexander Gibson.
44	David Craig.	74	Alexander McMillan.
45	James Fullerton.	75	Samuel Montgomery.
46	Daniel Fullerton, Junior.	76	Rensaler Wilkie.
47	William Holliday.	77	Joel Rushing.
48	Hugh Black.	78	J. K. P. Ragland.
49	Andrew Ross.	79	I. F. Johnson.
50	James Irving.	80	Samuel Douglas.
51	Matthew Irving.	81	Gilbert Beck.
52	Daniel Galagher.	82	John Dixon, Sen.
53	Alexander Douglas.	83	W. H. Jackson.
54	Thomas P. Woodside.	84	James Newman.
		85	Wilson Fulton.
182		86	J. W. Rushing.
		87	John H. McKelsey.
55	John Kelley.	88	T. S. Elliott.
56	Charles Dixon.	89	James Beggs.
57	J. J. Swanwick.	90	R. S. Guy.
58	Otto Zoller.	91	H. H. Rice.
59	James Robb.	92	William T. Anderson.

Votes cast.

For the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville and Southern Illinois Railroad Company, ninety-one (91).

183 Votes cast.

Against the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville and Southern Illinois Railroad Company, one (1).

Votes cast.

For the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Company, fifty-four (54).

Votes cast.

Against the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Company, thirty (30).

Votes cast.

For the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, twenty-three (23).

184 Votes cast.

Against the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, twenty-seven (27).

On the back of the foregoing poll book is the following endorsement: Filed July 6, 1869. L. T. Ross, cl'k.

Clerk's Certificate.

STATE OF ILLINOIS, } ss:
Perry County, }

I, W. S. D. Smith, clerk of the county court of Perry county, Illinois, do hereby certify that the attached and foregoing sheets, five (5) in number, contain and are a full, true, and complete copy of the poll book of an election held in Grand Cote precinct, in said county, on the 3d day of July, A. D. 1869, now on file in my office.

And I certify that the said copy is also a true copy of the oaths of the judges and clerks of election, which are written (or
185 printed) in said poll book, and of the list of voters written in said poll book, and of the entries of the judges and clerks of said election, which are written (or printed) in said poll book, showing the number of votes received by each proposition voted upon in said election, as the same appears on file in my office.

In testimony whereof I have hereunto set my hand
[SEAL.] and the seal of said court, at Pinckneyville, this eighteenth day of June, A. D. 1889.

W. S. D. SMITH, *Clerk.*

Lost Prairie.

Poll book of an election held at the school-house, in Lost Prairie precinct, in the county of Perry and State of Illinois, on the 3d day of July, A. D. 1869.

Enoch Eaton, John R. Huggins, John Cooper, judges of the election.

Attest: Henry L. Eaton, James R. Blair, clerk- of the election.

186 *Affidavits of Officers of Election.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, Enoch Eaton, Sen., do solemnly swear that I will perform the duties of judge of this election according to law and the best of my

ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

ENOCH EATON, —.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

JOHN COOPER, *Judge.*

STATE OF ILLINOIS, }
Perry County, } *ss:*

I, John Cooper, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

JOHN COOPER.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ENOCH EATON, *Judge.*

187 STATE OF ILLINOIS, }
Perry County, } *ss:*

I, John R. Huggins, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

JOHN R. HUGGINS.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ENOCH EATON, *Judge.*

STATE OF ILLINOIS, }
Perry County, } *ss:*

I, Henry L. Eaton, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

HENRY L. EATON.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ENOCH EATON, *Judge.*

STATE OF ILLINOIS, }
Perry County, } *ss:*

I, James W. Blair, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud,
188 deceit, and abuse in conducting the same.

JAMES W. BLAIR.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

ENOCH EATON, *Judge.*

List of Voters at an Election held on the 3d Day of July, A. D. 1869, at the Schoolhouse, in Lost Prairie Precinct, in the County of Perry and State of Illinois.

No.	Names.	No.	Names.
1	R. C. Wyatt, not reg.	27	Hugh Dawson.
2	John B. Adams.	28	Colin Hodge.
3	James Brown.	29	W. C. Hodge.
4	George Robb.		
5	M. S. McMillan.	189	
6	John T. Eaton.		
7	Alexander S. Brown, not reg.	30	James L. Brown.
8	John George Beck.	31	Rob't Finley.
9	John Huggins, Sr.	32	Henry Tabing.
10	Samuel P. Rial.	33	Joseph Deitz.
11	Balsar Gerstenschlayer.	34	Henry Brown.
12	George Bery.	35	Samuel W. Blair.
13	John Gerstenschlayer.	36	Mathew J. Huggins.
14	Alexander Huey.	37	Ribt. W. Cunningham
15	Jacob Thomas.	38	A. Y. Richmond, Sen.
16	Michael Thomas.	39	Alexander Brown.
17	Boaz Bills.	40	John Reich.
18	Andrew Denninger.	41	John Bauersach.
19	Matthew Chambers.	42	John Craig.
20	Joseph Chambers.	43	John D. Valentine.
21	Thomas B. Blair.	44	James W. Blair.
22	Wm. M. Blair.	45	John R. Huggins.
23	Wm. Rial.	46	John Cooper.
24	W. R. Blair.	47	S. N. Eaton.
25	James R. Blair.	48	John Eaton, Sen.
26	Andrew Griffith.	49	Archibald Wilson.

Votes cast.

For the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville & Southern Illinois Railroad Company, forty-six votes.

Votes cast.

Against the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville & Southern Illinois Railroad Company, —.

Votes cast.

For the county court of Perry county subscribing one
190 hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Company, forty-six votes.

Votes cast.

Against the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal & Railroad Company, —.

Votes cast.

For the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, forty votes.

Votes cast.

Against the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, —.

On the back of the foregoing poll book is the following endorsement: Filed July 6, 1869. L. T. Ross, cl'k.

191 *Clerk's Certificate.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, W. S. D. Smith, clerk of the county court of Perry county, Illinois, do hereby certify that the attached and foregoing sheets, four (4) in number, contain *are* a full, true, and complete copy of the poll book of an election held in Lost Prairie precinct, in said county, on the 3d day of July, A. D. 1869, now on file in my office.

And I certify that the said copy is also a true copy of the oaths of the judges and clerks of election, which are written (or printed) in said poll book, and of the list of voters written in said poll book, and of the entries of the judges and clerks of said election, which are written (or printed) in said poll book, showing the number of votes received by each proposition voted upon in said election, as the same appears on file in my office.

[SEAL.] In testimony whereof I have hereunto set my hand and the seal of said court, at Pinckneyville, this eighteenth day of June, A. D. 1889.

W. S. D. SMITH, *Clerk.*

192 *Southwestern.*

Poll book of an election held at the store of Brown & Coltom, Denmark, in Southwestern district, in the county of Perry and State of Illinois, on the 3d day of July, A. D. 1869.

David S. McClure, John W. Pyatt, Noah Guyman, judges of election.

Attest: J. L. Coltom, David Brown, clerks of the election.

Affidavits of Officers of Election.

STATE OF ILLINOIS, } ss:
Perry County, }

I, David S. McClure, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my

ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

DAVID S. McCLURE.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

JOHN W. PYATT,
Judge of Election.

193 STATE OF ILLINOIS, } ss:
Perry County, }

I, Noah Guyman, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

NOAH GUYMAN.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

DAVID S. McCLURE, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, John W. Pyatt, do solemnly swear that I will perform the duties of judge of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

JOHN W. PYATT.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

DAVID S. McCLURE, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, David Brown, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of
194 my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

DAVID BROWN.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

DAVID S. McCLURE, *J. P.*

STATE OF ILLINOIS, } ss:
Perry County, }

I, James L. Coltom, do solemnly swear that I will perform the duties of clerk of this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

JAS. L. COLTOM.

Sworn to and subscribed before me this 3d day of July, A. D. 1869.

DAVID S. McCLURE, *J. P.*

195 *List of Voters at an Election held on the 3d Day of July, A. D. 1869, at the Store of Brown & Coltom, in Denmark, in the County of Perry and State of Illinois.*

No.	Names.	No.	Names.
1	John Ayre.	40	Hampton Crawford.
2	Wm. H. Crain.	41	E. T. Rus.
3	John S. Williams.	42	A. L. McClure.
4	Thos. Boyd.	43	David S. McClure.
5	Jas. Boyd.	44	J. L. Coltom.
6	Jesse Green.	45	David Brown.
7	Wm. H. Templeton.	46	J. C. Blair.
8	Michael Harshaw.		
9	Bradley Belemy.	196	
10	Joseph Roth.		
11	Riley Crawford.	47	Andrew J. Reynolds.
12	T. J. Sweat.	48	Robert Deem.
13	Wilson McCary.	49	Alex. Watkins.
14	Henry Ashenfelter.	50	James Watkins.
15	F. C. Exum.	51	J. W. Pyatt.
16	John W. Exum.	52	Noah Guyman.
17	A. J. Exum.	53	R. H. Williams.
18	David Thomas.	54	George Valentine.
19	Francis Smith.	55	M. Wein.
20	James Gaston.	56	Valentine Berge.
21	Willis Throop.	57	Henry Brinkmer.
22	Asa R. Sade.	58	B. F. Evans.
23	A. M. Hankins.	59	David Stevenson.
24	Wm. Koen.	60	Wm. McLaughlin.
25	M. M. Edgar.	61	John F. Hanna.
26	Azariah Walgrove, Jr.	62	Elias Quillman.
27	M. Shrensberg.	63	H. C. Jenkins.
28	Simon Coltom.	64	Westley Clements.
29	R. Torr.	65	George E. Jenkins.
30	R. Temple.	66	James Chester.
31	M. J. McClure.	67	James Anderson.
32	John Foens.	68	Jasper Corgan.
33	Matthew McClure.	69	Henry Tangen.
34	James H. McClure.	70	Walter Conner.
35	Richard Lay.	71	B. F. Jenkins.
36	Thos. Throop.	72	Wm. P. Jenkins.
37	Andrew Y. Brown.	73	J. L. Tessier.
38	John McClure.	74	Allen Conner.
39	Samuel McClure.	75	George Coltom.

Votes cast.

For the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville and Southern Illinois Railroad Company, fifty-nine votes.

Votes cast.

Against the county court of Perry county subscribing one hundred and fifty thousand dollars to the Belleville and Southern
197 Illinois Railroad Company, two votes.

Votes cast.

For the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Company, sixty-nine votes.

Votes cast.

Against the county court of Perry county subscribing one hundred thousand dollars to the Chester & Tamaroa Coal and Railroad Co., three votes

Votes cast.

For the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, seventy-three votes.

Votes cast.

Against the county court of Perry county subscribing fifty thousand dollars to the St. Louis & Cairo Railroad Company, two votes.

198 On the back of the foregoing poll book is the following endorsement: Filed July 6, 1869. L. T. Ross, cl'k.

Clerk's Certificate.

STATE OF ILLINOIS, }
Perry County, } ss:

I, W. S. D. Smith, clerk of the county court of Perry county, Illinois, do hereby certify that the attached and foregoing sheets, five (5) in number, contain and are a full, true, and complete copy of the poll book of an election held in Southwestern precinct, in said county, on the 3d day of July, A. D. 1869, now on file in my office.

And I certify that the said copy is also a true copy of the oaths of the judges and clerks of election, which are written (or printed) in said poll book, and of the list of voters written in said poll book, and of the entries of the judges and clerks of said election, which are written (or printed) in said poll book, showing the number of votes received by each proposition voted upon in said election, as the same appears on file in my office.

199 In testimony whereof I have hereunto set my hand and the seal of said court, at Pinckneyville, this eighteenth day [SEAL] of June, A. D. 1889.

W. S. D. SMITH, *Clerk.*

F.

DEFENDANT'S EXHIBIT 2.

Charter, Chester & Tamaroa C. & R. R. Co.

"An act to incorporate the Chester & Tamaroa Coal and Railroad Company."

SEC. 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That Andrew J. Bryden, H. E.

Hosford, De Witt C. Barber, Thomas M. Sams, William K. Murphy, Joel M. Sulivan, R. M. Davis, John H. Barber, Zebidee P. Curlee, Joseph B. Holmes and John M. McCutcheon and their associates successors and assigns, be and they are hereby created a body politic and corporate under the name and style of "The Chester & — Coal and Railroad Company;" and, by that name, be and they are hereby made capable in law and equity to sue and be sued, plead and be impleaded, defend and be defended, in any
200 court of law and equity in this State; to make, have and use a common seal and the same to renew and alter at pleasure; and shall be and hereby are vested with all power, privileges and immunities which are or may be necessary to engage in mining and to construct, complete and operate a railroad, with a single or double track, commencing at Chester in Randolph county, Illinois; thence running easterly on the most eligible route via Pinckneyville in Henry (?) county, Illinois to Tamaroa in said Perry county; and for this purpose said company are authorized to lay out their said railroad not exceeding one hundred feet in width through the whole length; and for the purpose of cuttings, embankments, stone or gravel, may take as much more land as may be necessary for the proper construction and security of said railroad, and shall have power to extend the same to and connect with or cross over any other railroad within the State of Illinois; and may make such lateral or branch road or roads to any coal lands belonging to said company as they may deem necessary for the successful prosecution of their business; and said company may enter upon and
201 take possession of so much land as may be necessary for the construction and maintenance of the said railroad and branches, depots, side tracks, water stations, engine-houses, machine shops and other buildings and appendages necessary to the construction and working of said road; and in case said land be not donated to said company for such purpose it shall be lawful for said company to proceed to condemn said land as provided by the laws of the State concerning right of way.

SEC. 2. The said corporation may take and transport upon said railroad any person or persons, merchandise or other property and may fix, establish, take and receive such rates of toll for any passenger and property transported upon the same as the directors shall from time to time establish, subject to such limitations and restrictions as are or may be provided by general law

SEC. 3. The said corporation is hereby vested with power to purchase, hold and convey real and personal estate; to give and receive promissory notes; to enter into and carry on all kinds of mechanical and manufacturing business; to erect mills, furnaces, foundries, factories and machine shops for the manufacture
202 of flour, lumber, iron castings, machinery, farming utensils, and any other kind or description of article not forbidden by law; and may erect and build marine ways or dry docks and use the same for the purpose of repairing and building boats, barges or any other description of water craft; may buy, build and own boats,

barges or other vessels, and navigate the same for the transportation of their coal, manufactures or for other purposes.

SEC. 4. The capital stock of said corporation shall be one million dollars which may be increased to any sum not exceeding five million dollars, to be divided into shares of one hundred dollars each, which is hereby declared personal property and transferable on the books of the company in such manner as shall be prescribed by the by-laws of such corporation.

SEC. 5. It shall be lawful for said company from time to time to borrow such sum or sums of money as may be necessary for completing and operating said railroad or for conducting their mining or manufacturing business and to issue and dispose of their
203 bonds in denominations of not less than one hundred dollars, bearing a rate of interest not exceeding ten per cent. per annum for any amount so borrowed and mortgage the real and personal estate of said corporation, or to convey the same by deed of trust to secure the payment of any debt contracted by said company for the purposes aforesaid.

SEC. 6. In the sale or mortgaging of the real or personal estate of said corporation the conveyances shall be signed by the president and countersigned by the secretary under the seal of the corporation and be acknowledged in the same manner as is provided by law for the acknowledging of deeds.

SEC. 7. The affairs of said company shall be managed by a board of eleven directors which may be increased to any number not exceeding thirteen, a majority of whom shall constitute a quorum to do business; and Andrew J. Bryden, H. E. Hosford, De Witt C. Barber, Thomas N. Sams, William K. Murphy, Joel M. Sulivan, R. M. Davis, John H. Barber, Zebidee P. Curlee, Joseph B. Holmes and John M. McCutchen are hereby appointed the first board, who shall hold their offices, until their successors are elected and qualified in such manner as may be prescribed by the by-laws of said company.

204 Said board shall have the power of electing one of their number president and such other officers as may be prescribed by the by-laws; and said corporation shall be and is hereby vested with all the powers conferred upon railroad corporations by the general railroad laws of the State of Illinois or any amendment thereto.

SEC. 8. This act shall be a public act and take effect and be in force from and after its passage.

Approved March 4, 1869.

8.

DEFENDANT'S EXHIBIT 3.

Amendment to Charter of Chest. & Tamaroa C. & R. R. Co.

"An act supplemental to an act to incorporate the Chester & Tamaroa Coal and Railroad Company."

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That section 3 of said act to which this act is supplemental be and the same is hereby repealed, and in lieu thereof and the powers therein conferred the said cor-
205 poration shall have power to lease, purchase and hold real estate along the line of their said road and personal property and convey the same so far as may be necessary to carry on the business of said corporation; and may at any point or points along the line of their said railroad manufacture iron or other minerals and may establish, maintain and operate machine shops and furnaces for the purposes aforesaid; and may mine coal and establish such dock or docks at the terminus of their road on the Mississippi river as may be necessary to facilitate the transportation of their coal, iron or other minerals.

SEC. 2. This act shall take effect from and after its passage.

Approved March 4, 1869.

STATE OF ILLINOIS, *Sangamon County,* } *ss:*

CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
THE COUNTY OF PERRY, ILLINOIS.

Volney Hickox, stenographer, being duly sworn, on oath says that the above is a true, full, and complete copy of all the
206 evidence introduced, both on the part of the plaintiff and defendant, in the trial of above-entitled cause, heard before the circuit court of the United States for the southern district of Illinois Sept. 6th, 1889, to the best of my knowledge and belief.

[SEAL.] VOLNEY HICKOX,
Stenographer.

Subscribed and sworn to this Sept. 30th, 1890.

WM. R. BOWERS,
Notary Public.

207 Then, afterwards, to wit, on Friday, the 10th day of January, at the January term of said court, in the year of our Lord one thousand eight hundred and ninety, the following further proceedings were had in said cause and entered of record, to wit:

Judgment for Defendant.

CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
COUNTY OF PERRY. } 7699. Assumpsit.

This day come again the parties, by their attorneys, and the court having heretofore taken this case under advisement and being now fully advised in the premises, finds the issue for the defendant.

It is therefore ordered and adjudged by the court that the defendant recover of the plaintiff the costs and charges by it about its defense in this behalf expended, and that execution issue therefor.

208 And afterwards, to wit, on Saturday, the 8th day of February, at the term of court and in the year last aforesaid, the following further proceedings were had in said cause and entered of record, to wit:

Motion for New Trial.

CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
COUNTY OF PERRY. } 7699. Assumpsit.

This day comes the plaintiff, by Messrs. Sanders and Bowers, its attorneys, and enters its motion for a new trial.

And afterwards, to wit, on Wednesday, the 19th day of February, at the term of court and in the year last aforesaid, the following further proceedings were had in said cause and entered of record, to wit:

Order Setting Motion for New Trial for Hearing.

CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
COUNTY OF PERRY. } 7699. Assumpsit.

On motion of defendant, by Thomas J. Layman, Esq., its atto-ney, the motion heretofore entered by plaintiff for a new trial is set for hearing on Thursday, the 27th inst.

209 And then, afterwards, to wit, on Thursday, the 27th day of February, at the term of court and in the year last aforesaid, the following further proceedings were had in said cause and entered of record, to wit:

Order Overruling Motion for New Trial and Allowing Writ of Error.

CITIZENS' SAVINGS AND LOAN ASSOCIATION
vs.
COUNTY OF PERRY. } 7699. Assumpsit.

This day this cause came on to be heard upon the motion of the plaintiff, heretofore entered, for a new trial herein, and the court,

having heard argument of counsel and being sufficiently advised, overrules said motion.

Whereupon, on motion of plaintiff, a writ of error to the Supreme Court of the United States is allowed on plaintiff entering into bond to the defendant in the penalty of one thousand dollars, with security to be approved by the clerk of this court.

210 And then, afterwards, to wit, on the day and year last aforesaid, came the plaintiff, by its attorneys, and filed in said clerk's office its bill of exceptions in said cause, which is in the words and figures following, to wit:

Bill of Exceptions.

United States Circuit Court, Southern District of Illinois.

CITIZENS' SAVINGS & LOAN ASSOCIATION)
vs.)
PERRY COUNTY, ILLS.)

Be it remembered that on the trial of this cause the plaintiff gave in *his* behalf the following evidence, to wit:

Stipulations between the parties plaintiff and defendant that a jury be waived and the cause be heard and determined by the court, and that all matters raised by special pleas filed may be proved under the plea of general issue the same as if specially pleaded.

Transcript of the proceedings in Perry county court relative to the issue of the bonds, coupons from which are involved in this cause, by the county of Perry, Ills., to the Belleville & Southern Illinois Railroad Company. This transcript contains all orders and entries on the records of the county of Perry with reference to orders for the election to vote on the proposition to subscribe to the stock of said railroad, terms and conditions of the vote, location of the machine shops, kinds of bonds to be issued and all conditions precedent, and the results of the election, the order of the county court for the issue of the bonds, $100,000, in payment of the stock subscribed to the said railroad company, and the acknowledgement of receipt of the certificate from the railroad company of $100,000 of its stock for the bonds so issued.

211 It is not deemed necessary to copy this transcript in this bill of exceptions; it is given *in hæc verba* in the record of evidence, to which the court is respectfully referred.

In the above transcript of the records of Perry Co., Illinois, in reference to the proceedings of the county court relative to the issue of bonds of the county to the Chester and Tamaroa Coal and Railroad Company, coupons from which are involved in this cause, appear the orders of the county court for the election to vote on the

212 proposition to subscribe $100,000 to the capital stock of that railroad company, and the terms and conditions of the vote, the result of the election; that bonds of the county be issued in payment of the subscription of the stock, the kind of bonds and

time to run and interest on the same, and the conditions precedent to be performed by the railroad company before the bonds were to be delivered, and the order of the county court for the issue of the $100,000 of county bonds in payment of the same amount of stock subscribed to the said railroad, the order for subscribing for the stock and the receipt for the certificate of stock on the delivery of the bonds upon the conditions specified in the election notices, and orders of the county court having been fully complied with by the railroad company and the laws of the State under which they were issued. These are all copied *in hice verba* in the record evidence and it is not deemed necessary to copy them in this bill, to which the court is respectfully referred.

3rd. Plaintiff gave in evidence certificate of registration of the bonds issued in aid of the Belleville & Southern Illinois Railroad Company by the county, $100,000, filed in the State auditor's office Jan'y 2nd, 1871, sworn to by Chas. E. R. Winthrop, county
213 judge of Perry county, Ills., full copy of which is found in record of evidence, respectfully referred to.

4th. Plaintiff gave in evidence certificate of registration of $100,000 of bonds issued in aid of the Chester & Tamaroa Coal and Railroad Company by the county of Perry, Ills., and the sworn certificate of Chas. E. R. Winthrop, county judge of Perry county, Illinois, full copy of which is found in record evidence, respectfully referred to.

5th. Plaintiff gave in evidence bond No. 1 of the $100,000 issue of bonds to the Belleville & Southern Illinois Railroad Co., and bonds No. 48 and 52 of the issue of $100,000 by the county of Perry, Ills., to the Chester & Tamaroa Coal and Railroad Co., from which coupons in part in controversy in this case were taken. A full copy of each of these bonds is found in the record of evidence, with the endorsement of the State auditor of registration by him, to which the court is respectfully referred.

Counsel for defendant objected to the introduction of the above bonds as evidence, and stated his objections at length that there was no authority of law for their issuance. His objections are found in full in the record of evidence.

214 The court overruled the objections in the following language: "My object in having the objections stated was that if there was anything of a formal nature that might be obviated I am not disposed now to hear an argument. We have your objections fully stated. These bonds may go in subject to these objections."

6th. The plaintiff then gave in evidence the coupons from both issues of bonds which are in controversy in this cause, copy of coupons due 1st Monday of Jan'y, 1889, for $70, for interest due on bond No. 1, issued to the Belleville & Southern Illinois Railroad Co., and of bond No. 52, being six months' interest, $35, due July 1st, 1888, at the American Exchange National Bank of New York City, issued to the Chester & Tamaroa Railroad Company. Full copy of these coupons is found in the record evidence, to which the court is respectfully referred.

Counsel for defendant objected to these coupons as evidence, on

the ground that there was no power to issue the bonds from which they were taken. The court overruled the objection.

At the demand of counsel for defendant all the coupons in suit were produced by the plaintiff's attorneys. Counsel for de-
215 fendant claimed that the coupons did not show from what bonds they were taken, and that the bonds may have been issued for another purpose.

The COURT: Did you detach them?

Mr. BOWERS, of plaintiff's counsel: Part of them; not all of them.

The COURT: Did they come detached?

Mr. BOWERS: Some of them were detached, and some of them were detached by us.

The COURT: I don't know as there is much in this matter, but Mr. Bowers may be sworn.

By the COURT: State whether or not these coupons, so far as you know, were detached.

Mr. BOWERS: These coupons, as far as I know and believe, are detached from Perry county bonds issued to the Chester & Tamaroa Coal & Railroad Co., a copy of which we here introduce in evidence.

The COURT: Did you detach some of these yourself?

Ans. Part of these coupons were detached by myself; others were sent to our firm detached, with the representation that they were detached from these bonds.

COUNSEL FOR DEFENDANT: I guess there is no question about their genuineness.

The plaintiff having put in evidence all the coupons in-
216 volved in the suit, Mr. Bowers stated the total value of coupons offered in evidence by us is 85,560.

7th. The plaintiff then introduced in evidence the act of the General Assembly of Illinois entitled "An act supplemental to an act entitled An act to provide for a general system of railroad incorporations," approved November 6th, 1849, as granting in part the power to issue the bonds.

The act is copied in full in record evidence, to which the court is respectfully referred for its granting power.

8th. Plaintiff then offered in evidence the act of the General Assembly of Illinois incorporating the Belleville & Southern Illinois Railroad Co., approved Feb'y 14th, 1857. This act consists of 19 sections, all copied in the record of evidence, to which the court is respectfully referred for its powers therein granted for the issue of those bonds.

9th. Plaintiff offered in evidence sections 2 and 7 of "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns," in force April 16th, 1869, known as the registration act, stating conditions under which registration by the State auditor is lawful and the effects of it.

217 These sections are all that have any bearing upon this case and are fully copied in the record evidence, to which the court is respectfully referred.

10th. The plaintiff finally introduced the following amendment to the constitution of the State of 1870: "No county, city, town, township, or other municipality shall ever become subscribers to the capital stock of any railroad or private corporation, or make donations to or loan its credit in aid of such corporations:

Provided, however, That the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized under existing laws by a vote of the people of such municipalities prior to such adoption."

Defense.

1st. The defendant offered W. S. D. SMITH as a witness, and asked him to look at this order introduced by Mr. Sanders and state what it is.

Smith replied: It is a true copy of all the orders made by the county board of Perry county on that subject.

Q. Are you the clerk?

Ans. Yes, sir.

218 Q. Have you carefully examined the record as to all the orders relative to the Belleville & Southern Illinois Railroad Company?

Ans. Yes, sir.

Q. How long have you been in that office?

Ans. Since December, 1865.

Q. This copy introduced by the plaintiff, is it a copy of all and the only records of the county of Perry relative to the issue of bonds to the Belleville & Southern Illinois Railroad Co.?

Ans. Yes, sir.

Q. You state that after making the most thorough and diligent search?

Ans. Yes, sir.

Q. Now, examine that paper. Have you made thorough and careful examination of all the records in Perry county relative to the issue of bonds to the Chester & Tamaroa Coal & Railroad Co.?

Ans. Yes, sir.

Q. And is that paper you have in your hand a full and perfect copy of all and the only orders of Perry county relative to that matter?

Ans. Yes, sir; of all and the only orders relative to that election, February 19th, 1870. A former order had been made for an election to subscribe stock for the county to that railroad.

Objection by counsel for plaintiff to any evidence with reference to any former orders with respect to any election that failed to carry. We are trying to recover on orders that we have established in this transcript from records of the county. It is on those orders

219 and the bonds thereby authorized that we are trying to recover.

The COURT: Let him state that there were two former orders for an election which failed to carry.

Ans. That had no reference to this election.

The court overruled plaintiff's objection; to which ruling of the court plaintiff then and there excepted.

Q. You stated that an election failed to carry—that former elections were ordered on the subject?

Ans. Yes, sir.

Q. With reference to the election of February 19th, 1870, the witness says these are all and the only orders, and you base your suit as to the Chester & Tamaroa bonds entirely on the election of February 19th, 1870?

Mr. SANDERS: Yes, sir; on the evidence which is shown in this transcript.

The COURT: That shows that an election was held on that day.

DON ANSTADT sworn:

Q. How long have you lived in Duquoin, Perry Co., Ills.; did you live there in 1869?

Ans. Yes, sir.

Q. Lived there ever since?

Ans. Yes, sir.

Q. State whether the Belleville & Southern Illinois Railway Company ever located machine shops at Duquoin.

Ans. They did not.

Objection to question and answer by counsel for plaintiff on the ground that it is immaterial, for the reason that where there are officials whose duty it is to certify as to the performance of
220 conditions precedent, like an election or other precedent conditions, and where they certify to it on commercial obligations like these bonds and coupons, their certificate that these conditions precedent have been complied with estops the municipality from alleging that those conditions have not been complied with. Such officials in this case are the county clerk and the county judge of Perry county, who have made their certificates that all conditions precedent were performed, and they cannot contradict the certificates of their officials made in 1871, when they certified to matters with regard to which they were authorized to certify.

The COURT: Objection will be overruled and the evidence will be heard.

To which ruling of the court the counsel for plaintiff then and there excepted.

Q. You state that machine shops were not located there by this company?

Ans. No, sir.

Q. Where were they located?

Ans. East St. Louis.

Q. Do you know how many hands those shops employ?
Ans. A hundred and twenty to a hundred and fifty men.
Q. Do you know about the probable cost of the machine shops?
Ans. No, I do not; but it would run up probably in the neighborhood of $150,000.

Q. In 1868 and 1869 there was a large farming country
221 around there and a large coal field there?
Ans. Yes, sir.

Cross-examination:

Q. What means have you of knowing the amount invested in the machine shops at East St. Louis?
Ans. I have no means of knowing—just a supposition.
Q. Do you know of your own knowledge that the machine shops are there?
Ans. Yes, sir.

Defendant's counsel:

Q. You state that large quantities of coal are mined at Duquoin.
Ans. Yes, sir.

Plaintiff then and there excepted to the ruling of the court in admitting any and all testimony in reference to the location of the machine shops at East St. Louis and the value of cost of the shops and the coal fields and farming interests at Duquoin and value of the business thereof as immaterial and irrelevant to the issues in this cause and contrary to the law.

Mr. Smith recalled by defendant's counsel:

Q. I will ask how many voting places there were in Perry county at the time this election was held, November 3rd, 1868, the general election of that year.
Ans. Seven.
Q. State their names.

Objection by plaintiff to any testimony as to elections, as
222 plaintiff by the records of the county court of Perry Co., Ills., and the certificates of the officials of that county, who were authorized by law to determine all questions concerning the elections for the issue of the bonds of Perry county, Ills., had introduced record evidence, showing by the records of the county court of Perry county and the sworn certificates of the officials of the county that all conditions precedent necessary for the lawful issue of the bonds of Perry county, including the elections therefor, had been complied with.

Q. It is the last election previous to the one in question in this suit.
Ans. The names of the voting precincts at that time are Duquoin, Tamaroa, Beaucoup, Pinckneyville, Grande Cote, Lost Prairie, and Southwestern.

Q. I will ask you if the poll books of that election were returned to your office.

Ans. Yes, sir.

Q. Are these certified copies of those poll books?

Ans. Yes, sir.

Q. Are they the certified copies of all those poll books?

Ans. Yes, sir.

Q. Are the certified poll books certified copies of all and the only poll books of that election?

Ans. Yes, sir.

Q. We have produced them, if the court please, for the sole purpose of showing the number of votes cast at that election.

The COURT: It would encumber the record; cannot you
223 agree as to what it shows?

PLAINTIFF: We object to it as evidence, but we can agree as to what it shows. Let the clerk and Mr. Bowers together determine what the transcript shows and state it.

Ans. This shows a total number of votes cast at that election of 2,495.

Plaintiff objects. You can put down that number then as a statement of what the transcript shows, and our objection to it as evidence.

The COURT: It is understood, then, that the poll books of the general election of November 3rd, 1868, in Perry county, Illinois, are offered, and that they show a total vote cast at that election in that county, in the precincts which have been named, of 2,495.

Objections of plaintiff overuled; to which ruling of the court plaintiff then and there excepted, for the reason above given.

Q. I will ask you to state if you were in the office of the clerk of Perry county when the poll books of July 3rd, 1869, were returned.

Ans. Yes, sir.

Q. Were the same precincts in the county then as at the November election of the year before?

Ans. The same precincts with the same names.

Plaintiff:

Q. What election was that you were inquiring about?

224 Q. DEFENDANT: For the Belleville & Southern Illinois Railway Company.

—. Did they return the poll books from each of the precincts after that election?

Ans. Yes, sir.

Q. Are these papers which I now show you copies of all and the only poll books of that election of July 3rd, 1869?

Ans. Yes, sir.

Q. We now offer this transcript of these poll books.

PLAINTIFF: What is the object?

The COURT: I suppose the object is to show that there was not in

favor of the bonds a majority of all the votes cast at the preceding election.

Objection by plaintiff's counsel to the evidence.

The COURT: Do you want to introduce the entire transcript?

Ans. Yes, sir. The statute of '45 requires that when there is an election held the judges shall return the poll books to the county clerk and make certificate as to how many votes were cast for each candidate and sign it. In Duquoin precinct and one other, Southwestern, the judges and clerks made certificate as to how much the proposition received, how much for and how much against, but made no certificate at the end of that at all; hence the proposition to take stock in the Belleville & Southern Illinois railroad received only about nine hundred votes, when it should have re-

225 ceived thirteen hundred.

Plaintiff:

Q. No certificate of the election returned?

DEFENDANT: There are blanks there, but they are not signed.

PLAINTIFF: The election was held, then, but not properly certified to.

Plaintiff:

Ans. I contend that the only evidence you have as to how the vote went is the certificate of the judges and clerks.

The COURT: Let the certified copy go in, then. It must speak for itself. It goes subject to the objection.

Objection overruled by the court; to which the plaintiff then and there excepted for reasons above stated.

Cross-examination:

Q. State what advantages you had for knowing that these returns are accurate; first, as to your being in office.

Ans. I occupied the position of deputy county clerk for two terms—December, 1865, to December, 1873—and since I have been clerk.

Q. Now, state if these returns here copied were accepted as the returns from the precincts at that time.

Ans. Yes, sir.

Q. State if they were in any way acted upon as the returns of that election with reference to officers or otherwise.

Ans. They were by the clerk, with reference to the election of county officers, and so forth, accepted as the basis.

226 Q. They were accepted and acted upon with reference to the officials elected?

Objection by the defendant. There were no officials. Just the question of subscription.

Ans. I wish to be understood as testifying that any action that the officials took was simply the action of the clerk in taking and filing the returns—the returns of that election.

Q. Was not that election acted upon in the subscription of stock by the county?

Ans. I would not like to say in regard to that.

Q. Were not you there, and do you not know when this subscription was made by the board?

Ans. Yes, sir.

Q. Did this question come up then in any way as to the legality of *of* these poll books? Q. You would have to have an abstract of the votes?

Ans. There was a question as to the number of votes that should have been required as a basis. I remember there was a question as to the propriety of the board issuing $100,000 of bonds to the company, when $150,000 was the amount voted upon.

Q. An abstract was there with returns from every precinct?

—. Yes, sir.

Redirect by defendant:

Q. I will ask you if the poll books, of which these are copies, are the only returns made by the officials of that election.

Ans. Yes, sir.

227 Q. Do you know whether any abstract was made of that election of July 3rd, 1869?

Ans. Do not know.

Q. Have you searched diligently?

Ans. I have searched the office diligently to find an abstract of that election, but do not find any.

The COURT: The poll books, with the certificates and all, go in to speak for themselves.

Q. Will you now get the poll books of the election of November, 1869? I will ask you if you were county clerk at the time of that election.

Ans. Yes, sir.

Q. I believe you have stated that you were deputy there and clerk ever since; what precincts were there November, 1869?

Ans. The same that I have mentioned.

Q. Same names?

Ans. Yes, sir.

Plaintiff:

Q. Was it a general or special election?

Ans. General election of county officers in 1869.

The COURT: In the same way you may let him state the results of that election without offering the poll books.

Ans. The number of persons voting at that election was 2,024.

Plaintiff objects to the evidence.

Q. Here now is a copy of the poll books of the election held for the issue of bonds to the Chester & Tamaroa Coal & Railroad Co. on Feb'y 19th, 1870. We propose to offer an abstract of the vote at

that election, stating that there were 986 votes cast there in
228 favor of the proposition and 91 votes against it.

Plaintiff objects to the evidence.

The COURT: Better put in the poll book, but it is admitted, over the objection, that they show so much for and so much against. The poll books are offered and objected to, but it is allowed that they show 986 for subscription and 91 votes against it.

Objections by the plaintiff overruled; to which ruling of the court the plaintiff then and there excepted for reasons above stated.

Q. These are copies of all and the only poll books returned at that election?

Ans. Yes, sir.

Q. There is no return from Duquoin precinct, and I want to prove that there was no election there.

Objection by the plaintiff to this evidence.

JACOB MESMORE sworn:

Q. You resided at Duquoin on Feb'y 19th, 1870, at the time the election was held for the Tamaroa subscription?

Ans. Yes, sir.

Q. Was there any vote taken there or not?

Ans. No, sir.

Q. No poll established?

Ans. No, sir.

Cross-examination by plaintiff:

Q. Were you there any time before that election was held?

Ans. Yes, sir; been there since 1858.

Q. Were there any election notices put up?

Ans. I could not say for certain, but think there were.

Q. Did you see any?

229 Ans. It has been so long that I could not state whether I saw any or not.

Q. Did you go to any voting precinct yourself?

Ans. No, sir; there was not any.

Q. Did you know there were any voting precincts open?

Ans. I knew there was none in Duquoin.

Q. What is the custom there—voting at one precinct?

Ans. There was at that time.

Q. Where do they have that voting place?

Ans. At Duquoin.

Q. In a hall or any voting place?

Ans. No; wherever they could get a place to hold an election in.

Q. Were you around there?

Ans. I was on the street; heard talk in regard to it.

Q. What was the talk?

Ans. The talk was that there was no judges to hold the election.

Q. No judges?

Ans. No polls open to hold the election.

Q. No judges appointed to hold the election?
Ans. I believe there were.
Q. Were they there?
Ans. They were not there—did not materialize.
Q. Why did not the citizens select judges in the ordinary manner?
Ans. We did not want any.

Redirect by defendant:

Q. You say but one voting precinct in Duquoin precinct at that time?
Ans. That's all.
Q. Who were the judges appointed to hold that election?
Ans. Been so long ago I cannot remember.
230 Q. Do you know that there were any?
Ans. I think so; I heard them talking about it. The judges did not materialize; in fact, we were all laughing about it. The judges did not appear that day.
Q. Did not appear to preside?
Ans. Yes, sir.
Q. Do you know whether Mr. Fountain, Mr. Flock, and Mr. Happy were judges at that election?
Ans. I know them; but I do not know whether they were appointed or not.
Q. How large a population had Duquoin at that time?
Ans. Between 1,500 and 2,000; might have been a little more or a little less.
Q. Are you certain nobody voted that day for the subscription?
Ans. Yes, sir.

D. W. Dry sworn:

Q. Where did you live at that time?
Ans. Lived within two miles of Duquoin—lived there ever since I was born.
Q. You were sheriff of the county in Feb'y, 1869?
Ans. Yes, sir; elected in 1869.
Q. Where is your voting place?
Ans. Duquoin.
Q. Were you in Duquoin the day the Chester & Tamaroa election was held, Feb'y, 1869?
Ans. I was there that day.
Q. State if there was any election in Duquoin that day.
Ans. There was no election. I was sheriff at the time, doing business at Pinckneyville; stayed there the night before. I was very anxious the proposition voting a subscription to that
231 road should not carry, and I went to Duquoin to vote against it. When I got there they told me, a number of them, that no polls were open. I looked about, thought they were joking me, but found no polls open at all. I feel confident no election was held there whatever. I felt very anxious to vote against the proposition and went to Duquoin for no other purpose but to do so.

Cross-examination:

Q. How long did you stay there?

Ans. I think I stayed all the evening.

Q. You saw no one voting?

Ans. No, sir; no one voting.

Q. Saw no polls opened?

Ans. No, sir.

Q. Were you at the usual voting place?

Ans. Yes, sir; they vote usually at some office window or house, usually on Main street, and I was at every place where they usually hold an election.

Q. Could there not have been an election there that day without you knowing it?

Ans. I think not.

Q. I would like to ask you what was the number of votes cast at the election before this?

Ans. Before this election we did not hold?

—. Yes, sir.

Ans. That would be a hard question to remember 18 or 20
232 years. I could only answer it from hearing the poll books.

Q. What was the population of Duquoin at that time?

Ans. I could hardly recollect that. Probably I never saw a statement at that time what it was. I lived outside of the corporation, within two miles of what the city was then. It was only a village then—a large precinct of our county.

The COURT: Goes south to the Jackson county line, I believe.

Q. Who composed the county court at that time?

Ans. I think Judge Winthrop, and probably Judge Primm was associate, and probably Ervin.

Q. Will you state where the gentlemen lived who composed the county court?

Ans. Judge Winthrop lived about 3 miles east of Duquoin. Judge Ervin lived in the northwestern part of the county. Judge Primm lived east of Pinckneyville, 2½ or 3 miles northeast of Pinckneyville.

The court having overruled the objections of the plaintiff to all of the evidence with reference to the elections offered by the defendant, the plaintiff then and there excepted to said rulings of the court for the reasons above stated, and that it was contrary to law in such cases as this to allow its introduction.

Copies of the various poll books, list of voters, and certifi-
233 cates and findings of the judges of the election precinct are all given *in hæc verba* in the record of evidence as introduced by the defendant, to which the court is respectfully referred.

The defendant introduced the charter of the Chester & Tamaroa Coal and Railroad Company, which is found in vol. 2 of the Private Laws of 1869 of Illinois, on pages 824 to 828; also an amendment to the charter, which is found on page 859 of the same volume. Both

the act and the amendment were passed the same day. Copies *in hac verba* are found in the record of evidence, to which the court is respectfully referred.

And thereupon the court, upon the evidence and finding of the facts aforesaid and propositions of law, ruled in favor of the defendant, and the court found the issues in favor of the defendant in the following language, to wit:

Judgment of the Court.

The $100,000 of bonds issued in aid of the Chester & Tamaroa Railroad Company are held void for want of power on the part of the Perry county authorities to issue them. The proposition of the county to take $100,000 stock, voted on Feb'y 19th, 1870, did not receive a majority of the qualified voters of the county, 986
234 votes only being cast in favor of it, while at the last preceding general election, held in November, 1869, there were 2,024 votes thrown.

The other series of bonds, $100,000, issued in aid of the Belleville & Southern Ills. Railroad Company, were also held invalid because being in violation of the act of the Illinois legislature of April 16th, 1869, which provided that no bonds, subscriptions, or donations could be valid and binding until all conditions precedent should have been complied with.

The election for subscription as to these bonds was held July 3rd, 1869, and the election notices contained a clause, among other conditions, that no bonds should be issued or stock subscribed until the railroad company should locate their machine shops at Duquoin. The shops were not located there, but at East St. Louis. The court holds that the conditions imposed by the vote was a part of the vote and a part of the authority for the subscription within the meaning of the proviso to the article of the Illinois State constitution of 1870 on the subject of municipal subscriptions, and *city* as authority—

German Savings Bank *v.* Franklin Co., 128 U. S., 526.
Town of Eagle *v.* Kohn, 84 Ills., 290.
Richerson *v.* The People, 115 Ills., 450.
235 Onstott *v.* The People, 123 Ills., 489.

Judgement for defendant announced by Allen, dist. judge—Gresham, circuit judge, concurring.

And for the reasons aforesaid plaintiff moved the court for a new trial herein; but the court over-ruled said motion for a new trial and gave judgement upon its said findings and in accordance therewith in favor of the defendant; to all of which plaintiff then and there severally and respectively objected and excepted; and inasmuch as the foregoing matters and things do not appear of record plaintiff tenders this its bill of exceptions and asks that it may be signed and sealed by the court and made a part of the record in

this case, and it is accordingly done within the time allowed by the court.

WILLIAM J. ALLEN. [SEAL.]
Dist. Judge.

Endorsed: Filed February 27, 1890. James T. Jones, clerk.

236 And afterwards, to wit, on the 11th day of August, in the year last aforesaid (1890), came the plaintiff, by its attorneys, and filed in said clerk's office its bond on writ of error in said cause, which was approved by the clerk of said court and is in the words and figures following, to wit:

Bond on Writ of Error.

In the Circuit Court of the United States for the Southern District of Illinois.

THE CITIZENS' SAVINGS & LOAN ASSOCIATION *vs.* THE COUNTY OF PERRY. } Assumpsit. Damages, $20,000.

Know all men by these presents that we, the Citizens' Savings & Loan Association, a corporation organized and existing under the laws of the State of Ohio, as principal, and Geo. A. Sanders & Wm. R. Bowers, as surety, are held and firmly bound unto the County of Perry, in the State of Illinois, in the penal sum of one thousand dollars, lawful money of the United States, to be paid to the
237 County of Perry; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, executors, and administrators, firmly by these presents.

Signed and sealed by us this sixth day of August, A. D. 1890.

The condition of the above obligation is such that whereas the above-named Citizens' Savings & Loan Association of Cleveland, Ohio, is about to prosecute an appeal to the Supreme Court of the United States to reverse the judgment rendered in a certain action at the January term, A. D. 1890, by the circuit court of the United States for the southern district of Illinois, in which action The Citizens' Savings & Loan Association was plaintiff and The County of Perry was defendant, wherein the validity of certain bonds issued by said county was in controversy:

Now, therefore, if the above-named Citizens' Savings & Loan Association shall prosecute its said appeal to effect and answer all costs and damages rendered and to be rendered in case said
238 judgment shall be affirmed, or if it shall fail to make good its said appeal, then this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof we have hereby signed and sealed and delivered this instrument.

[SEAL.] THE CITIZENS' SAVINGS & LOAN ASSOCIATION,
——— ———, *Pres.* [SEAL.]
H. N. LUELLANNYER. [SEAL.]
GEORGE A. SANDERS. [SEAL.]
WM. R. BOWERS. [SEAL.]

Approved August 11, 1890.

JAMES T. JONES, *Clerk.*

Endorsed: Filed August 11, 1890. James T. Jones, clerk.

239 *Clerk's Certificate.*

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

I, James T. Jones, clerk of the circuit court of the United States within and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of all the papers filed and the proceedings of court thereon had (being a complete transcript) in a certain cause lately pending in said court, wherein The Citizens' Savings and Loan Association was plaintiff and The County of Perry (Illinois) was defendant, as fully as the same now appears of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Springfield, in said district, this 1st day of October, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fifteenth year.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

JAMES T. JONES, *Clerk.*

240 *Citation.*

Supreme Court of United States.

THE UNITED STATES OF AMERICA, *ss:*

To the County of Perry, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois, wherein The Citizens' Savings and Loan Association is plaintiff in error and you are defendant in

error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties aforesaid in that behalf.

Witness the Hon. William J. Allen, district judge of the United States for the southern district of Illinois, at Springfield, in said district, this 1st day of September, A. D. 1890, and of our Independence the 115th year.

WILLIAM J. ALLEN,
U. S. Dist. Judge, South'n Dist. Ill.

I hereby accept service of this citation September 3rd, 1890.

THOS. J. LAYMAN,
Attorney for Defendant in Error.

241 *Assignment of Errors.*

1. The circuit court erred in finding the issues for the defendant, contrary to the law applicable to the facts admitted and the evidence in the case.

2. The court erred in giving judgment for the defendant, on oral testimony and contrary to law, against the plaintiff over the record evidence introduced by it.

3. The court erred in holding invalid, contrary to law, the $100,000 of bonds issued by the county of Perry, Illinois, to the Belleville and Southern Illinois Railroad Company, because issued in violation of the act of the legislature of Illinois of April 16th, 1869, and because the machine shops of the railroad company had been located at East St. Louis and not at Duquoin, as it is claimed the notices for the election of July 3rd, 1869, called for, the plaintiff having shown by the only competent and best of evidence, the records of the county court of Perry county and the sworn certificates of the county judge, whose duty it was by law to determine whether all conditions precedent required by law had been complied with, including the majority of the legal voters for the subscription to the stock of the railroad company and the issue of the bonds in payment therefor, had been fully complied with by the railroad company before the issue of the bonds.

4. The court erred in holding, contrary to law, that the conditions imposed by the vote in reference to the location of the machine shops of the railroad company at East St. Louis instead of at Duquoin, Illinois, was a part of the vote and a part of the authority for the subscription to the stock of the railroad company and the issue of bonds in payment therefor, within the meaning of
242 the proviso in the article of the State Constitution of 1870 of Illinois on the subject of municipal subscriptions to railroad companies.

5. The court erred in admitting, contrary to law, the testimony of W. S. D. Smith and Don Anstadt as to an election that failed to carry and as to the location of the machine shops at East St. Louis and not at Duquoin, the cost of the same, the number of hands employed therein, the mines around Duquoin and value of the same,

and the farming lands and their value, and all evidence as to the location of the machine shops and their value, and the mines and farming lands and their value.

6. The court erred in admitting, over the objections of the plaintiff and contrary to law, the evidence of W. S. D. Smith and others, and all evidence offered by the defendant in regard to the election held July 3, 1869, for the vote to subscribe to the stock of the Belleville & Southern Illinois Railroad Company and the Chester & Tamaroa Coal and Railroad Company, the returns, and all evidence in reference to the elections and their results, because the plaintiff had proved by competent evidence, which estopped the defendant from denying the facts proved—by the recitals on the bonds themselves, the sworn certificates of the county judge made for their registration by the State auditor, and by the records of the county court of Perry county, Illinois, officials appointed by law and by their official position to call the elections, canvass the votes, and announce the results—that the elections had been legally called and held, and that a majority of the legal voters of the county of Perry, Illinois, had voted for the subscription to the stock of the railroad company, and that all the precedent conditions required by law had been complied with by the railroad company before the bonds were issued in payment of said subscription.

243 7. The court erred in admitting as evidence for the defense any poll books or copies thereof of any elections held in Perry county, Illinois, in reference to the subscription to the stock of railroads on either issue of its bonds, coupons from which are involved in this case, tending to show that there were not the number of votes cast required by law at such elections, and the oral testimony that in some precincts there was no election held, inasmuch as the fact had been established by the plaintiff by record and competent evidence that the elections had been legally called and held and a majority of the voters had voted in favor of the proposition to subscribe for the stock to pay which the bonds were issued.

8. The court erred in admitting copies of the poll books of any elections of Perry county in reference to the subscription of stock to railroads and the issue of bonds in payment of the same, and in holding that the certificates of the judges and clerks of the elections were informal and incompetent, when the same returns of those elections had been received and acted upon in the subscription of the stock and the issue of the bonds by the county officials.

9. That the finding of the issues in favor of the defendant is not supported by the evidence and special findings of the facts.

10. That the finding of the issues in favor of the defendant is contrary to the law arising upon the evidence introduced and the facts found by the court.

11. The court erred in finding the issues against the plaintiff and in not rendering judgment for the amount of its claim.

244 12. The court erred in finding the issues for the defendant and entering judgment thereon.

13. The court in its rulings was in other respects informal, contrary to law, and erroneous.

14. The court erred in over-uling plaintiff's motion for a new trial and in entering judgment against the plaintiff.

SANDERS AND BOWERS,
For Plaintiff in Error,
Per GEO. A. SANDERS.

Springfield, Ills., Aug. 11, 1890.

Endorsed on cover: Case No. 14,380. S. Illinois C. C. U. S. No. 330. The Citizens' Savings & Loan Association, plaintiff in error, *vs.* The County of Perry. Filed October 25, 1890.

UNITED STATES OF AMERICA.

IN THE

Supreme Court of the United States.

OCTOBER TERM A. D. 1893.

NO. 330.

THE CITIZENS SAVINGS AND LOAN ASSOCIATION,
Plaintiff in Error,

vs.

THE COUNTY OF PERRY, *Defendant in Error.*

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

BY ITS COUNSELLOR,

GEORGE A. SANDERS, OF

SANDERS & BOWERS, OF

SPRINGFIELD, ILLINOIS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN THE

Supreme Court of the United States

AT THE

OCTOBER TERM, A. D. 1893.

No. 330.

THE CITIZENS' SAVINGS AND LOAN ASSOCIATION, *Plaintiff in Error* vs. THE COUNTY OF PERRY, IN ILLINOIS *Defendant in Error*	Assumpsit. Damages $20,000.

BRIEF AND ARGUMENT,

By GEO. A. SANDERS,
of Sanders & Bowers,
Counsellors of the Plaintiff in Error.

STATEMENT OF THE CASE.

This suit was decided at the June term of the Court below, A. D. 1889. It was tried by the Court and judgment for the defendant for costs. Two hundred thousand dollars of defendant's county bonds are involved indirectly in the decision.

This suit was to recover on coupons, face value of $5,565.00, taken from the bonds aforesaid and interest thereon.

The bonds from which the coupons in suit were taken were a part of an issue of $100,000 by the County defendant to the Belleville & Illinois Southern Railroad Company, dated Jan. 1, 1871, and due in twenty years, 100 bonds at $1,000 each, bearing interest at 7 per cent. payable at the American Exchange National Bank of the City of New York. The bonds were authorized by a vote of the electors, at an election held Jan. 3, 1869, *Record p.* 25, also upon coupons taken from bonds part of an issue by the defendant County of $100,000, to the *Chester and Tamaroa* Railroad and Coal Company, $50,000, July 1, 1871, and Jan. 1, 1872, and due in twenty years from date. They bear interest at 7 per cent. and were payable at the American Exchange National Bank of New York City. These bonds were authorized by a majority vote of the electors at an election held February 19, 1870. All the bonds were duly registered in the office of the Auditor of the State of Illinois.

The interest was promptly paid upon the bonds for nearly 17 years, when due, without protest or delay. The plaintiff is a bona fide holder of his coupons, having purchased the bonds and coupons for an investment, long before there was any default in payment of the interest and without any notice whatever of any claimed want of power to issue the bonds and coupons, or of any irregularity in their issue. *Record p.* 17.

A jury was waived in writing and the case heard by the Court, and judgment rendered for the defendant for costs. *Record p.* 22 *and Record p.* 112.

A motion for a new trial was overruled and a Writ of Error allowed to this Court. *Record p.* 113.

ASSIGNMENT OF ERRORS.

First. The Circuit Court erred in finding the issues for the defendant contrary to the law applicable to the facts admitted, and the evidence in the case.

Second. The Court erred in giving judgment for the defendant, on oral testimony, and contrary to law, against the plaintiff, over record evidence introduced by it.

Third. The Court erred in holding invalid, contrary to law, the $100,000 bonds issued by the County of Perry, Illinois, to the Belleville and Southern Illinois Railroad Company, because issued in violation of the Act of the legislature of Illinois, of April 16, 1869, and because the machine shops of the railroad company had been located at East St. Louis and not at Duquoin, as it is claimed the notices for the election of July 3, 1869, called for, the plaintiff having shown by the only competent and best of evidence, the records of the County Court of Perry County, and the sworn certificate of the County Judge, whose duty it was by law to determine whether all conditions precedent required by law had been complied with, including the majority of the legal voters for the subscription of the stock of the railroad company and the issue of the bonds in payment therefor, had been fully complied with by the railroad company before the issue of the bonds

Fourth. The Court erred in holding, contrary to law, that the conditions imposed by the vote in reference to the location of the machine shops of the railroad company at East St. Louis, instead of at Duquoin Illinois, was a part of the vote, and a part of the authority for the subscription to the stock of the railroad company and the issue of bonds in payment therefor, within the meaning of the pro-

viso in the State Constitution of 1870, of Illinois, on the subject of municipal subscriptions to the railroad companies.

Fifth. The Court erred in admitting, contrary to law, the testimony of W. S. D. Smith and Don Anstadt as to an election that failed to carry, and as to the location of the machine shops at East St. Louis and not at Duquoin; the cost of the same; the number of hands employed therein; the mines around Duquoin and value of the same; and the farming lands; and their value; and all the evidence as to the location of the machine shops and their value; and the mines and farming lands and their value.

Sixth. The court erred in admitting over the objections of the plaintiff, and contrary to law, the evidence of W. S. D. Smith and others, and all evidence offered by the defendant in regard to the election held July 3, 1869, for the vote to subscribe to the stock of the Belleville & Southern Illinois Railroad Company and the Chester and Tamaroa Coal & Railroad Company, the returns and all evidence in reference to the elections and their results, because the plaintiff had proved by competent evidence, which estopped the defendant from denying the facts proved by the recitals on the bonds themselves, the sworn certificates of the county judge made for their registration by the State Auditor, and the records of the County Court of Perry County, Illinois, officials appointed by law and by their official position to call the elections, canvass the votes and announce the results—that the elections had been legally called and held, and that a majority of the legal voters of the County of Perry, Illinois, had voted for the subscription to the stock of the railroad company, and that all the precedent conditions required by law had been complied with by the railroad company, before the bonds were issued in payment of said subscription.

Seventh. The Court erred in admitting as evidence for the defense any poll books or copies thereof of any elections held in Perry County, Illinois, in reference to the subscription to the stock of railroads, on either issue of its bonds, coupons from which, are involved in this case, tending to show that there were not the number of votes cast required by law at such elections, and the oral testimony that in some precincts there was no election held, inasmuch as the fact had been established by the plaintiff, by record and competent evidence that the elections had been legally called and held, and a majority of the voters had voted in favor of the proposition to subscribe for the stock to pay which the bonds were issued.

Eighth. The Court erred in admitting copies of the poll books of any elections of Perry County, in reference to the subscription of stock to railroads, and the issue of bonds in payment of the same, and in holding that the certificates of the judges and clerks of the elections were informal and incompetent, when the same returns of those elections had been received and acted upon in the subscription of the stock, and the issue of the bonds by the county officials.

Ninth. That the finding of the issues in favor of the defendant is not supported by the evidence and special findings of the facts.

Tenth. That the finding of the issues in favor of the defendant is contrary to the law arising upon the evidence introduced and the facts found by the Court.

Eleventh. The Court erred in finding the issues against the plaintiff and in not rendering judgment for the amount of its claim.

Twelfth. The Court erred in finding the issues for the defendant and entering judgment thereon.

Thirteenth. The Court, in its rulings was in other respects informal, contrary to law, and erroneous.

Fourteenth. The Court erred in overruling plaintiff's motion for a new trial and in entering judgment against the plaintiff.

GEO. A. SANDERS, OF SANDERS & BOWERS,
For Plaintiff.

LAWS RELIED UPON AND RECORD EVIDENCE.

Bonds issued to the Belleville & Southern Illinois Railroad Company, $100,000—Order of the County Court for the Election.

So much of the order for an election made by the County Court of Perry County, at a special election of that court, held May 24, 1869, as is necessary to be considered in this case is as follows, to-wit:

"And now this 24th of May, A. D. 1869, it is ordered by the Court that an election be held at the usual places of voting in the several precincts of the County of Perry, on the 3d day of July, A. D. 1869, by the judges of election appointed at the September term, A. D. 1868, to ascertain if the County Court of said County shall subscribe one hundred and fifty thousand dollars of stock to the Belleville & Southern Illinois Railroad Company.

And be i further ordered that no bonds be issued, or stock be subscribed, by said Court to the Belleville & Southern Illinois Railroad Company, unless twelve hundred and thirty legal voters of said County shall have voted in favor of the same at said election; nor until said Company shall have built said road, and put the same in operation from Belleville to Duquoin through the town of Pinckneyville, with depot and depot buildings at said town, nor unless said road shall be in operation from Belleville to Duquoin on or before the first day of January, A. D. 1871, and shall locate their machine shops at said Duquoin. And be it further ordered that said bonds shall be in the sums of not less than one hundred, nor more than one

thousand dollars, payable at any time within twenty years from their date, at the option of the said County Court, bearing interest at the rate of 7 per cent. per annum, and issued under the provisions of the act of the Legislature of Illinois of November 6, 1849, and act of April 16, A. D. 1869, entitled, "An Act to fund and provide for the paying of the Railroad debts of counties, townships, cities and towns." *Record p. 24.*

ORDER FOR SUBSCEIPTION TO THE STOCK AND THE ISSUE OF THE BONDS TO THE BELLEVILLE & SOUTHERN ILLINOIS RAILROAD COMPANY.

Be it ordered by the Court that the Judge and Clerk of this Court issue this day to the Belleville & Southern Illinois Railroad Company, one hundred bonds of one thousand dollars each, bearing date Jan. 1, A. D. 1871, with interest at the rate of 7 per cent. per annum from this date, and payable on the first day of January, 1891, and redeemeable at the pleasure of the county any time after the first day of January, 1876, on account of the subscription of said County to the capital stock of said Company heretofore made by the Court, in accordance with an order of this Court made May 24, 1869, submitting to the legal voters of Perry County the question of subscribing $150,000 to the capital stock of said Company under which order a special election was held on the 3d day of July, 1869 and a majority of the legal voters of said County voted for such subscription.

Therefore, in accordance with the foregoing order of this Court, the judge of this Court and the clerk thereof proceeded to execute said bonds (the same being numbered consecutively from 1 to 100) and delivered the same to the president and secretary of said B. & S. I. R. R. Co., who thereupon delivered to said Court the following certificate:

BELLEVILLE, ILLINOIS,
Office of B. & S. I. R. R. Co.

This certifies that the County of Perry, State of Illinois, is the owner of thousand shares of one hundred dollars each of the capital stock of the Belleville & Southern Illinois Railroad Company, transferable only upon the books of said Company.

In witness whereof the president and secretary of said Company hereunto have set their hand this fifth day of December, 1870. *Record p.* 25.

CERTIFICATE OF REGISTRATION OF THE $100,000 OF PERRY COUNTY BONDS TO THE B. & I. R. R. CO.

STATE OF ILLINOIS, } ss.
County of Perry. }

PINCKNEYVILLE, Dec. 5, 1870.

To the Auditor of Public Accounts of the State of Illinois, Springfield, Illinois:

SIR: I herewith transmit to you for registration in your office under the provistons of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns, in force April 16, 1869, the following bonds, being one hundred in number, dated January 1st, 1871, amounting to ($100,000) one hundred thousand dollars, payable on the first day of January, 1891, and bearing interest at the rate of seven per centum per annum, payable annually. These bonds are issued by the County Court of the County of Perry and State of Illinois, to the Belleville & Southern Illinois Railroad Company, under and by authority of the provisions of an act entitled 'An act to incorporate the Belleville & Southern Illinois Railroad,' approved Feb. 14, 1857; and I, as Judge of the County Court of said County, do hereby certify that all the preliminary conditions in the act in force April 16, 1869, required to be done

to authorize the registration of these bonds and entitle them to the benefits of the said act last referred to, have been fully complied with to the best of my koowledge and belief.

CHARLES E. R. WINTHROP,
County Judge Perry County.

Subscribed and sworn to by the said Charles E. R. Winthrop, before me this 5th day of December, A. D. 1870.

J. CARROLL HARRISS,
[SEAL.] Clerk of the County Court."

THE CHESTER AND TAMAROA COAL & RAILROAD COMPANY.

Order for issuing $100,000 of Perry County, County Bonds.

Tuesday, January 18, A. D. 1870.

Ordered by the Court that an election held at the usual places of voting in the several precincts of the County of Perry, on the 19th day of February, A. D. 1870, by the judges of election appointed at the Sept. Term, A. D. 1869, of this Court, to ascertain if the County Court of said County shall subscribe one hundred thousand dollars to the capital stock of the Chester & Tamaroa Coal & Railroad Company.

And be it further ordered that no stock be subscribed to the capital stock of said coal and railroad company, unless nine hundred and eighty-four (984) legal voters of said county shall have voted for the same at said election.

And be it further ordered that the subscription to the capital stock of said company shall be paid in county bonds in sums of not less than one hundred dollars, nor more than one thousand dollars each, payable at any time within twenty years from date, at the

option of said County Court, bearing interest at the rate of seven per cent. per annum; said bonds to be registered and paid as provided in an "Act entitled an Act to fund and provide for paying railroad debts of counties, townships, cities and towns, in force April 16, 1869; but no bonds shall be registered or paid except in the following manner and upon the following conditions, to-wit: $50,000 of said bonds shall be issued to said railroad and coal company, when they shall have completed said road and cars for passengers and freight, shall have run thereon to Pinckneyville, in said Perry County, and depot and depot buildings shall have been established or built within the corporate limits of said town of Pinckneyville, provided the work on said road shall commence at Tamaroa and depot, and depot buildings shall have been established, or built within the corporate limits of said Town of Tamaroa; and be it further ordered that the residue, $50,000, shall be issued when said road shall be completed through the county, and thence to the terminus of said road and cars shall have been run thereon and all necessary depot and depot buildings have been established, or built as above required and specified.

The ballots in favor of subscribing the stock shall contain the words "for subscription" and those against the subscription—"against subscription." *Record p.* 26–27.

ORDER FOR SUBSCRIBING $100,000 TO THE STOCK OF THE CHESTER & TAMAROA COAL AND RAILROAD COMPANY.

Tuesday, March 8, A. D. 1870.

Whereas, at the January special term, 1870, of the County Court of Perry County, State of Illinois, an order was made calling an election to be held in the usual places of voting in said county, for the purpose of voting for, or against authorizing the County Court of Perry County, to subscribe one hundred thousand ($100,000) dollars,

to the capital stock of the Chester & Tamaroa Coal and Railroad Company; and whereas, in pursuance of said order and published notices thereof, as required by law, said election was held in said county on the 19th day of February, A. D. 1870; and whereas, it appears from the returns of said election on file in the County Clerk's office of said county, and the certificate of the board of canvassers that a majority of the legal voters of said County of Perry, (assuming the standard required by law and the said order of the Court taking as a basis the number of votes cast at the last general election for county officers), having voted in favor of subscribing said stock; Now, therefore, it is ordered by the Court, in pursuance of said order of Court and the election held thereunder, and the statutes in such case made and provided; that the County of Perry, in the State of Illinois, do subscribe one hundred thousand dollars to the capital stock of the Chester & Tamaroa Coal and Railroad Company, to be paid in bonds issued in accordance with said order of Court, under which said election was held, and to be registered and paid as provided by an act of the General Assembly of the State of Illinois, in force Feb. 16, 1869, entitled, "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns;" and it is further ordered by said Court that the judges of this Court subscribe said stock on the books of said company, and that the same be attested by the clerk of this Court, under the seal of this court. *Record p. 27.*

PRESENTATION OF THE CERTIFICATE OF STOCK TO THE COUNTY COURT

Wednesday, June 8th, A. D. 1870.

On this day is presented to the Court the certificate of stock issued to the County of Perry, State of Illinois, by the Chester & Tamaroa Coal and Railroad Company, which said certificate is or-

dered to be recorded and filed, the said certificate being in the words and figures following, to-wit:

Chester & Tamaroa Coal and Railroad Company.

No. 2. 1,000 Shares. Shares $100 each.

This certifies that the County of Perry, in the State of Illinois, has subscribed and is entitled to the benefits of one thousand shares of the capital stock of the "Chester & Tamaroa Coal and Railroad Co.," to be paid in Perry County bonds as provided by the terms of subscription made by the County Court on the books of the company and the election held on the 19th day of February, 1870, authorizing said Court to make said subscription and transferable on conditions as provided in the by-laws.

(U. S. R. S. 25 cts; cancelled.) D. C. BARBER, President.

Z. C. CURLEE, Sec.

(Corporate Seal.) *Record p.* 28.

ORDER TO ISSUE THE REMAINING $50,000 OF BONDS.

November 10, 1871.

Whereas, at the January special term, 1870, of the County Court of Perry County, Illinois, to-wit: on the 18th day of January, A. D. 1870, an order was made by the said County Court and entered of record, submitting to the legal voters of said Perry County, the question of voting for or against authorizing the said County Court to subscribe $100,000 to the capital stock of the Chester & Tamaroa Coal and Railroad Company; and, whereas, it was provided that no stock should be subscribed unless nine hundred and eighty-four legal voters should vote in favor of such subscription; and, whereas, it was further provided by said order that said stock should be paid in the bonds of said county in sums of not less than one hundred, nor more than one thousand dollars, to bear interest at the rate of seven per cent. per annum; and, whereas, it was further provided by an act

of the General Assembly of the State of Illinois, entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force April 16, 1869, and upon the following conditions, towit; Fifty Thousand dollars of said bond to he issued to said company when they shall have completed said railroad, and cars for passengers and freight shall have run thereon to Pinckneyville and depot and depot buildings shall have been established, or built within the the corporate limits of said town of Pinckneyville, provided said work shall be commenced at Tamaroa and depot and depot buildings shall have been established or built at Tamaroa and the residue of $50,000 to be issued when said road should be completed through the county, and thence to its terminus; and necessary depots and depot buildings shall have been established and built, etc.; and whereas, at the March term, A. D. 1870, of said County Court an order was made in pursuance of the election held at the several precincts in said county, on the 19th, day of February, 1870, in pursuance of the said order above recited and the notice of the County Clerk thereof, and of the statutes in such cases made and provided, an order was made by the said County Court that the said County Court subscribe $100,000 to the capital stock of the said Chester & Tamaroa Coal & Railroad Company, to be paid in bonds of said county according to the conditions of said order calling said election, and ordering and authorizing the judges of said court to subscribe the said stock on the books of the said Chester & Tamaroa Coal and Railroad Company, and that the same be attested by the clerk of said court, and the seal thereof attached; and, whereas, at the said March term, 1870, of said court the judge of said court did in pursuance of said order subscribe one thousand shares of one hundred dollars each to the capital stock of said Chester & Tamaroa Coal and Railroad Company on the books of said company, which

subscription was attested by the clerk of said County Court and the seal thereof attached; and, whereas, at the June term, 1870, of said court a certificate of stock in said Chester and Tamaroa Coal and Railroad Company for one thousand shares of one hundred dollars each was presented to said court by D. C. Barber, President of said Coal and Railway Company, which said certificate was accepted and ordered to be recorded and filed in the office of the clerk of said County Court; and whereas, said company have completed their said railroad from Tamaroa to Pinckneyville and have run cars for freight and passengers thereon and have built depot buildings in said towns of Tamaroa and Pinckneyville, and said company have complied with and fulfilled all the conditions of said order of said court made at the January special term, 1870, to entitle said company to have and receive of and from the said County of Perry the first issue of said bonds.

Now, therefore, be it ordered by the court, that Charles E. R. Winthrop, Judge of the County Court, and J. Carroll Harriss, clerk of said court, sign and deliver to said company, or their authorized agent or attorney, fifty bonds of the said county for the sum of one thousand dollars each; that the said bonds be of date of the first day of July, 1871, and draw interest from their date, payable semi-annually, at the American Exchange National Bank, in the city of New York, and that all coupons on said bonds, maturing on and previous to the said first day of July, 1871, be cut off by the said Charles E. R. Winthrop, Judge, and J Carroll Harriss, Clerk of said court, before delivering the same to said company, and that the said Judge of the County Court be authorized to certify, under oath, that all the conditions of the order made on the 18th day of January, 1870, above recited, have been complied with by the said Chester and Tamaroa Coal and Railroad Company, and that said bonds be registered

and paid in pursuance of an act of the General Assembly of the State of Illinois entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns." *Record pp.* 29—30.

ORDER FOR THE EXECUTION ANE DELIVERY OF THE BONDS.

December 6, 1871.

On the 6th day of December, A. D. 1871, it is ordered by the Court that Charles E. R. Winthrop, Judge and J. Carroll Harris, Clerk of this Court, execute and deliver to the Chester & Tamaroa Coal and Railroad Company, their agent, or attorney, fifty (50), bonds of this county, heretofore authorized by a vote of the people of this county at an election held on the 19th day of February, 1870, said bonds to be of the sum of one thousand dollars ($1,000) each, and to be dated January 1st, 1872, and to be redeemable at any time within twenty years (20) years, at the option of the County Court of this county, and to bear interest from their date at the rate of seven (7) per cent. per annum, payable semi-annually at the American Exchange National Bank in New York, on the first days of January and July in each year, said bonds to have interest coupons attached, but all such coupons on said bonds which mature on or before the said first day of January, 1872, shall be cut off and destroyed before the delivery of said bonds, the principal and interest of said bonds to be paid as provided in an Act of the General Assembly of the State of Illinois, entitled "An act to fund and provide for paying the railroad debts of counties, townships cities and towns," in force April 16, 1869.

The said $50,000 of stock heretofore by this Court subscribed to said Chester & Tamaroa Coal and Railroad Company, the first installment of $50,000 of the bonds of this county having been heretofore issued bearing date July 1st, 1871. *Record pp.* 30–31.

subscription was attested by the clerk of said County Court and the seal thereof attached; and, whereas, at the June term, 1870, of said court a certificate of stock in said Chester and Tamaroa Coal and Railroad Company for one thousand shares of one hundred dollars each was presented to said court by D. C. Barber, President of said Coal and Railway Company, which said certificate was accepted and ordered to be recorded and filed in the office of the clerk of said County Court; and whereas, said company have completed their said railroad from Tamaroa to Pinckneyville and have run cars for freight and passengers thereon and have built depot buildings in said towns of Tamaroa and Pinckneyville, and said company have complied with and fulfilled all the conditions of said order of said court made at the January special term, 1870, to entitle said company to have and receive of and from the said County of Perry the first issue of said bonds.

Now, therefore, be it ordered by the court, that Charles E. R. Winthrop, Judge of the County Court, and J. Carroll Harriss, clerk of said court, sign and deliver to said company, or their authorized agent or attorney, fifty bonds of the said county for the sum of one thousand dollars each; that the said bonds be of date of the first day of July, 1871, and draw interest from their date, payable semi-annually, at the American Exchange National Bank, in the city of New York, and that all coupons on said bonds, maturing on and previous to the said first day of July, 1871, be cut off by the said Charles E. R. Winthrop, Judge, and J Carroll Harriss, Clerk of said court, before delivering the same to said company, and that the said Judge of the County Court be authorized to certify, under oath, that all the conditions of the order made on the 18th day of January, 1870, above recited, have been complied with by the said Chester and Tamaroa Coal and Railroad Company, and that said bonds be registered

and paid in pursuance of an act of the General Assembly of the State of Illinois entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities, and towns." *Record pp.* 29—30.

Order for the Execution ane Delivery of the Bonds.

December 6, 1871.

On the 6th day of December, A. D. 1871, it is ordered by the Court that Charles E. R. Winthrop, Judge and J. Carroll Harris, Clerk of this Court, execute and deliver to the Chester & Tamaroa Coal and Railroad Company, their agent, or attorney, fifty (50), bonds of this county, heretofore authorized by a vote of the people of this county at an election held on the 19th day of February, 1870, said bonds to be of the sum of one thousand dollars ($1,000) each, and to be dated January 1st, 1872, and to be redeemable at any time within twenty years (20) years, at the option of the County Court of this county, and to bear interest from their date at the rate of seven (7) per cent. per annum, payable semi-annually at the American Exchange National Bank in New York, on the first days of January and July in each year, said bonds to have interest coupons attached, but all such coupons on said bonds which mature on or before the said first day of January, 1872, shall be cut off and destroyed before the delivery of said bonds, the principal and interest of said bonds to be paid as provided in an Act of the General Assembly of the State of Illinois, entitled "An act to fund and provide for paying the railroad debts of counties, townships cities and towns," in force April 16, 1869.

The said $50,000 of stock heretofore by this Court subscribed to said Chester & Tamaroa Coal and Railroad Company, the first installment of $50,000 of the bonds of this county having been heretofore issued bearing date July 1st, 1871. *Record pp.* 30–31.

Registration of the Chester & Tamaroa Coal and Railroad Bonds, $50,000.

State of Illinois, } ss.
County of Perry, }

Pinckneyville, Dec. 6th, 1871.

To the Auditor of Public Accounts of the State of Illinois.

Sir: I hereby certify that the following described bonds are entitled to registration in your office under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, cities and towns," in force April 16th, 1869, the bonds being numbered from number 51 to 100 inclusive, for $1,000 each, dated Jan. 1st, 1872 and payable within twenty years from date, being in all 50 bonds, and amount to $50,000, and bearing interest at the rate of seven per cent. per annum, payable semi-annually on the 1st day of January and July. These bonds are issued by the County Court of Perry County, in the County of—and State of Illinois, to the Chester & Tamaroa Coal and Railroad Company, under and by authority of the provisions of "An act supplemental to an 'Act entitled an Act to provide for a general system of railroad incorporation," approved November 6th, 1849, approved—18—and by a vote of the people of said county, at an election held on the 19th day of February, 1870, and I, as County Judge of said county, do hereby certify that all the preliminary conditions in the act "in force April 16, 1869," required to be done, to authorize the registration of these bonds and to entitle them to the benefits of said act last referred to have been fully complied with, to the best of my knowledge and belief.

Charles E. R. Winthrop,
County Judge.

Subscribed and sworn to by the said Charles E. R. Winthrop, before me this 7th day of December, A. D. 1871.

Henry Clay, Notary Public.

[Seal.]

Registration of the Chester & Tamaroa Coal and Railroad Bonds $50,000.

State of Illinois, } ss.
County of Perry, }

Springfield, Ill., Nov. 15th, 1871.

To the Auditor of Public Accounts of the State of Illinois.

Sir: I herewith transmit to you for registration in your office under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force April 16, 1869, the following bonds, being from one to fifty inclusive, in numbers, dated first day of July, 1871, amounting to ($50,000) fifty thousand dollars, payable within twenty years from date, bearing interest at the rate of seven per centum per annum, payable semi-annually. These bonds are issued by the County of Perry, in the County of Perry and State of Illinois, to the Chester & Tamaroa Coal and Railroad Company, under and by authority of the provisions of an Act supplemental to an Act entitled "An act to provide for a general system of railroad incorporation, approved November 6th, 1849.

And I, as County Judge of said county, do hereby certify that all the preliminary conditions in the act, "in force April 16, 1869," required to be done, to authorize the registration of these bonds, and to entitle them to the benefits of the said act, last referred to have been fully complied with to the best of my knowledge and belief.

Charles E. R. Winthrop,
County Judge.

Subscribed and sworn to by the said Charles E. R. Winthrop, as Judge, before me, this fifteenth day of November, A. D. 1871.

[Seal] Henry Clay, Notary Public.

(On the margin of the above certificate, opposite the date November 7, 1849, are written the words "Vote, 19th Feby. 1870.") *Record p.* 33—34.

COPY OF THE RECITALS ON THE BELLEVILLE AND SOUTHERN ILLINOIS RAILROAD BONDS.

"This bond is one of a series of one hundred of like tenor and date, issued under the authority and in accordance with an act of the Legislature, of the State of Illinois, entitled 'An act to incorporate the Belleville & Southern Illinois Railroad,' approved Feby. 14th, 1857, and is redeemable at the pleasure of said county, at any time after the first day of January, A. D. 1876." *Record p.* 36.

COPY OF THE RECITALS ON THE CHESTER AND TAMAROA COAL AND RAILROAD COMPANY BONDS.

"This bond is one of a series of bonds, issued by the County of Perry, in payment of one hundred thousand dollars of the capital stock of the Chester and Tamaroa Coal and Railroad Company, in pursuance of an election held by the legal voters of Perry County, Illinois, on the 19th day of February, 1870, and by virtue of the provisions of an act of the General Assembly of the State of Illinois, entitled 'An act to provide for a general system of railroad incorporation,' approved November 6, 1849.

"And for the payment of said sum of money, and accruing interest thereon, and in the manner aforesaid, the faith of the County of Perry, State of Illinois, is hereby irrevocably pledged, as also its property, revenue and resources." *Record p.* 37.

GENERAL RAILROAD ACT OF NOVEMBER 6TH, 1849.

Section 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly: That whenever the citizens of

any city, or county, in this State are desirous that said city or county, should subscribe for stock in any railroad company already organized or incorporated, or hereafter to be organized or incorporated; under any law of the State, such city or county may, and are hereby authorized to purchase or subscribe for shares of the capital stock in any such company, in any sum not exceeding one hundred thousand dollars for each of such cities or counties; and the stock so subscribed for, or purchased, shall be under the control of the County Court of the county, or Common Council of the city making such subscription or purchase, in all respects as stock owned by individuals.

Section 2. That for the payment of said stock the Judges of the County Court of the county, or Common Council of the city making such subscription or purchase, are hereby authorized to borrow money at a rate not exceeding ten per cent. per annum, and to pledge the faith of the county or city for the annual payment of the interest and the ultimate redemption of the principal, or, if the said Judges, or Common Council, should deem it most advisable, they are hereby authorized to pay for such subscription, or purchase, in bonds of the city or county, making such subscription to be drawn for that purpose, in sums of not less than fifty dollars, bearing interest not exceeding ten per centum per annum; *Provided*, That no bond shall be paid out at a rate less than par value.

Section 3. The railroad companies already organized, or incorporated, or hereafter to be organized or incorporated, under the laws of this State, are hereby authorized to receive the bonds of any county or city becoming subscribers to the capital stock of such company, at par, and in lieu of cash, and to issue their bonds, bearing interest not exceeding ten per centum per annum, for any moneys by them borrowed for the construction of their railroad and fixtures, or for the

purchase of engines and cars, and for such purpose, may dispose of any bonds by them received as aforesaid.

Section 4. No subscription shall be made or purchased, or bonds issued by any county or city under the provisions of this act, whereby any debt shall be created by said Judges of the County Court, or by the Common Council of any city, to pay any such subscription, unless a majority of the qualified voters of such county or city (taking as a standard the number of votes thrown at the last general election previous to the vote had upon the question of subscription under this act, for county officers), shall vote for the same; and the Judges of the County Court of any county, or the Common Council of any city, desiring to take stock as aforesaid, shall give at least thirty days' notice, in the same manner as notices are given for election of state, or county officers, in said county, requiring said electors of said county or said city, to vote, upon the day named in such notices, at their usual place of voting, for, or against, the subscription for said capital stock, which they may propose to make, and said notices shall specify the company in which stock is proposed to be subscribed, the amount which it is proposed to take, and the time which the bonds proposed to be issued are to run, and the interest which said bonds are to bear; or, in case it is proposed to borrow money to pay such subscription, then the notices shall state the terms upon which said loan is to be effected; and the opinion of the electors shall be expressed upon their ballots, "For Subscription," or, "Against Subscription," and counted and returned by the judges and clerks of elections, as in other cases; and if a majority of the voters of said county or city, assuming the standard aforesaid, shall be in favor of the same, such authorized subscription or purchase, or *any part thereof*, shall be then made by said Judges or Common Council. In case any election had under this act is held upon a day of a general

election, then the number of votes thrown at such general election for county officers shall be the standard of the number of qualified voters, as aforesaid. No bonds shall be issued under the provisions of this act, by any county, or city, excepting for the amount required to be paid at the time of subscription, and for the amounts of, and and at the time when assessments upon all the stockholders of said company shall be regularly assessed and made payable.

Approved Nov. 6, 1849. *Record p.* 44—45.

ACT AUTHORIZING THE ISSUE OF BONDS TO THE BELLEVILLE & SOUTHERN ILLINOIS RAILROAD COMPANY.

February 14th, 1857.

SECTION 9. The directors of said company, after the same is organized, shall have power to open books at such time and places as they may deem proper for the subscription of stock, until the whole amount of capital stock shall be subscribed, or parts and amounts thereof, as they shall desire to have subscribed; and said directors are hereby authorized and empowered to take and receive subscriptions to their said capital stock, on such terms and in such amounts as they may deem for the interest of said company, and as they may prescribe by their by-laws, and regulations, from any other railroad company or corporation, and from any county, city, town, or village; and any such subscription shall be valid and binding upon any railroad company, corporation, county, city, town, or village making the same; *Provided*, said subscriptions shall be made in every respect, subject to the provisions and restrictions of an act supplemental to an act entitled "An act to provide for a general system of railroad incorporations," approved November 6th, 1849. * * * *Record p.* 48.

REGISTRATION ACT OF APRIL 16, 1869.

SECTION 7. And it shall not be lawful to register any bonds

under the provisions of this act, or to receive any of the benefits or advantages to be derived from this act, until after the railroad in aid of the construction of which the debt was incurred, shall have been completed near to, or in such county, township, city or town, and cars shall have run thereon; and none of the benefits, advantages or provisions of this act shall apply to any debt unless the subscription or donation creating such debt was fir t submitted to an election of the legal voters of said county, township, city or town, under the provisions of the laws of this state, and a majority of the legal voters living in said county, township, city or town, were in favor of such aid, subscription or donation; and any county, township, city or town shall have the right, upon making any subscription, or donation to any railroad company, to prescribe the conditions upon which bonds, subscriptions, or donations shall not be valid and binding until such conditions precedent, shall have been complied with.

And the presiding judge of the County Court, or the Supervisor of the township, or chief executive officer of the city, or town, that shall have issued bonds to any railway or railways, immediately upon the completion of the same, near to, into or through such county, township, city, or town as may have been agreed upon, and the cars running thereon, shall certify under oath that all the preliminary conditions in this act required to be done, to authorize the registration of such bonds, and to entitle them to the benefits of this act have been complied with, and shall transmit the same to the State Auditor, with a statement of the date, amount, number, maturity and rate of interest of such bonds, and to what company and under what law issued; and thereupon the said bonds shall be subject to registration by the State Auditor, as hereinbefore provided. *Record p.* 57.

THE PROHIBITORY AMENDMENT TO THE CONSTITUTION OF 1870.

No county, city, town, township, or other municipality shall ever become subscribers to the capital stock of any railroad or private corporation, or make donation, to or loan its credit in aid of such corporation; *Provided*, however, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized under existing laws, by a vote of the people of such municipalities, prior to such adoption. In force July 2, 1870. *Record p* 51.

THE SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the constitution of the State, and to carry the same into effect, it is lastly ordained and declared.

SECTION 1. That all laws in force at the adoption of this constitution, not inconsistent therewith, and all rights, actions, prosecutions, claims and contracts of this State, individuals or bodies, corporate, shall continue to be as valid as if this constitution had not been adopted.

SECTION 4. County Courts, for the transaction of county business in counties not having adopted township organizations, shall continue in existence and exercise their present jurisdiction until the Board of County Commissioners, provided in this constitution, is organized in pursuance of an Act of the General Assembly, and County Courts in all counties, shall have the same power and jurisdiction they now possess, until otherwise provided by general laws.

Starr and Curtiss, Ill. Stat. Vol. 1, *pp.* 168–169.

BRIEF AND ARGUMENT.

In arguing this case we claim first, that the plaintiffs are *bona fide* holders of the coupons introduced in evidence. If they are *bona fide* holders, they have legal rights in respect to recitals on both issues of bonds, from which their coupons are taken, that might not be accorded them were they not *bona fide* holders of negotiable, commercial securities.

The following averment is in the declaration to-wit: "and plaintiffs aver that they became the owners and holders of said bonds, with coupons attached, long before the maturity of either of said bonds or said interest coupons; that they purchased the same in open market for an investment, paying therefor a good and valuable consideration, without notice of any claimed defect or irregularity in their issue, relying upon the faithful action of the county and state officials in their execution, registration and delivery, and upon all laws and judicial decisions then in force and applicable thereto for their validity." *Record p.* 17.

Bona fide Holders.

To constitute a *bona fide* holder, it is necessary that the obligation should be received before maturity. That a valuable consideration should have been paid for it. That it should have been taken without any knowledge of the defense sought to be made.

Chitty on Bills, 272.

The Mayor vs. *Ray*, 19 Wall 402.

"One who purchased railroad bonds in open market, supposing them to be valid, and having no notice to the contrary, will be deemed a *bona fide* holder"

Galveston Railway vs. *Cowdry*, 11, Wall 459.
Thompson vs. *Perrine*, 103, U. S. 818.

Under the above rule and decisions, the plaintiffs are clearly *bona fide* holders and are entitled to all the benefits of *bona fide* holding of commercial securities. The above averments covers all the legal requirements. It was not traversed by any plea, nor disputed by any proof. We therefore argue the case from the legal standpoint of *bona fide* holders.

It is a well settled doctrine that a "*bona fide* purchaser of negotiable paper for value before maturity, takes it free from all infirmities in its origin, *unless it is absolutely void for want of power in the maker to issue it.*"

County of Sac vs. *Cromwell*, 96 U. S. 51.
Burr vs. *City of Carbondale*, 76 Ill., 456.

The position of the defense, after issuing these bonds, with every indicia of legislative power, and regularity of issue stamped upon them; selling them as negotiable securities upon the open market, and regularly and promptly paying the interest upon them for over 17 years, is, that it never had any legislative authority, to issue the bonds, coupons from which are involved in this case, and if it did, it never was legally executed. That its own elected officials perpetuated a gross fraud upon their own county and people, and certified on commercial paper as facts, statements, that were untrue and unworthy of credence.

This defense is not only uncreditable, and comes too late; but is utterly untenable. We expect to show ample legislative authority for both issues of bonds, and a substantial and literal compliance with all the legal requirements in the execution of the powe.

Both issues of bonds derive their legislative power from, and are issued under, the Act of November 6, 1849, the general railroad law of the State of Illinois, at the time these bonds were voted, The order for the election in the Belleville & Illinois Southern Railroad, (*Record p.* 24) recites "*and issued under the provisions of the act of the legislature of Illinois of November 6, 1849*, and the recital on the bonds (*Record p.* 36), is—"this bond is one of a series of 100, of like tenor and date, issued under the authority and in accordance with the requirements of an Act of the legislature of the State of Illinois, entitled "An act to incorporate the Belleville & Southern Illinois railroad, approved February 14th, 1857, and is redeemable at the pleasure of the county, at any time after the first day of January, A. D. 1876." There is a section and *proviso* in this Act of *Feb. 14, 1857*, which refers to, and connects it directly with the Act of 1849, and thus confers legislative power to all municipal and public corporations, issuing bonds under it to pay subscriptions to stock in railroads.

It is found in the act of incorporation of that road (*Record p.* 48), and *Section* 9, is as follows, towit: "The directors of said company, after the same is organized, shall have power to open books at such time and places as they may deem proper, for the subscription of stock, until the whole amount of the capital stock shall be subscribed, or such parts and amounts thereof as they shall desire to have subscribed; and said directors are hereby authorized and empowered to take and receive subscriptions, to their said capital stock on such terms and in such amounts, as they may deem for the interest of said company, and as they may prescribe by their by-laws and regulations, from any other railroad company, or corporation, and *from any county, city, town, or village*; and *any such subscription shall be valid and binding upon any railroad company, corporation, county, city, town or village making the same; Provided said subscription shall*

be made in every respect subject to the provisions and the restrictions of an act supplemental to an act entitled "An act to provide for a general system of railroad corporations," approved November 6th, 1849."

This *proviso* simply refers to the general railroad act, for all the conditions, in the exercise of the power to make subscriptions to the capital stock of this railroad company, by the corporations, the defendant county, in this case at bar.

It matters not that the power to subscribe to this particular railroad, is in both acts, that of Febrnary 14, 1857, incorporating this particular railroad, and (by reference to it), in the general act of November 6, 1849, which authorizes counties and cities to subscribe for stock in any railroad then incorporated, or that might be incorporated, and issue bonds to pay for the same. The legal effect is exactly the same, as if all the conditions required to legally execute the power granted that is mentioned in the act of November 6, 1849, had been recited in *hoec-verba* in the act of February 15th, 1857. This last act grants the defendant authority to subscribe for stock in the railroad company it incorporates; but refers for conditions, terms, and methods, of executing that power conferred, to the act of November 6, 1849, in the following language, towit: *Provided*, said *subscriptions shall be made in every respect subject to the provisions and restrictions of an act supplemental to an act entitled "An act to provide for a general System of railroad incorporations, approved November 6, 1849."*

Nothing could be plainer than this. The *bona fide* holder is here referred for the legislative power to make this issue of bonds, by the recitals, in the act of February 14, 1857, and the *proviso* of that act, *supra*, to the act of November, 6th, 1849, for the terms and conditions upon which the power is to be exercised.

All the *bona fide* holder is obliged to know, is, "that the power, in the maker of his negotiable securities existed when they were voted and executed." It matters not whether it be conferred in one, or a dozen legislative acts.

The court says in *Harter* vs. *Kernochan*, 103 U. S. 570: "*The recitals in the bonds import a compliance with all the provisions of the Act of the assembly under which they were issued.*" "The recitals in the bonds, that they were issued *in pursuance* of those statutes, IS CONCLUSVE upon the township, in a suit brought by a *bona fide* holder, to enforce the payment of them.

Bonham, vs. *Needles*, 103 U. S. 648.
Wade vs. *Walnut*, 103 Id., 695.
City of Cairo vs. *Zane*, 149 Id., 122. *Decided April* 4, 1893.

It is true that reference is made in the order for the elections to the act of April 16, 1869, for each issue of bonds (*Record p.* 24—29—31.) and in the certificates of registration of the bonds (*Record p.* 32—33—34.) but this is only as to the *conditions and terms upon which the power is to be executed.* That act nowhere claims to give *any power* to a corporation to subscribe to the stock. It simply has reference to the *registration of bonds*, and the precedent conditions requisite for their registration, when the subscriptions were paid in bonds, and when the holders desired them registered. This becomes at once apparent, when we observe that by the terms of the act of February 14, 1857, the subscriptions to the stock could be paid for in cash, or notes and mortgages, upon real estate. *Second proviso, Sec.* 9, *act of Feb.* 14, 1857. *Record p.* 48.

In reference to this question of power to make the subscriptions and issue these bonds, the defendant's attorney, in his brief, filed Feb. 9, 1891, utterly fails to recognize the important principle of

law above referred to. That a reference by one act, in this case, the *proviso* in the act of Feb. 14, 1857, to the act of November 6, 1849, is as binding on all parties as if the text referred to in the act of 1849 had been fully cited, in the act of Feb. 14, 1857. On *pages* 38 and 39 of that brief he utterly ignores the *proviso*, in the act of Feb. 14, 1857. He also fails to make any distinction between *the powers* granted by the legislative act to the corporation, and the *execution of that power*, in the election and returns of the voters, the formal subscription to the stock, the terms and conditions of issuing and registering the bonds, if so desired; the delivering of the bonds and the receiving of the stock of the railroad; and any other terms and conditions precedent to the delivery of the bonds. This distinction is most important in all commercial bond litigation. For in its observance comes the advantages of *bona fide* holding. It is the legal duty of the *bona fide* holder, to see that there was legislative power in existence, for the issue of the bonds he has purchased at the time the vote was taken to make the subscription, to pay for which his bonds were issued.

In *Grand Chute* vs. *Winegar*, 15 Wall. 371, the court says; "The bonds on their face impart a compliance with the law under which they were issued, and the purchaser was bound to look no further for evidence of a compliance with the conditions of the grant of power."

Oregon vs. *Jennings*, 119 U. S. 74
Meyer vs. *Muscatine*, 1 Wall, 175.
Getspecke vs. *Dubuque*, 1 Id., 384.

It is equally the legal duty of the public corporation issuing its negotiable bonds for sale, under the law merchant, to see that this power granted it by the legislative act, is legally executed, or carried

into effect. The inflexible rule of law is, that if the holder has purchased negotiable securities issued by a public corporation, without legislative authority granted it, he is responsible, and loses his money paid therefor. And if the corporation in issuing its bonds, after the legislative authority has been given, fails to have all conditions precedent complied with, in executing the power granted; it alone is responsible, and it must suffer the consequences. The duty of each party is clearly and distinctly defined by the law merchant. But in many Illinois cases, after obtaining the railroad, and issuing bonds in payment of stock subscribed, and paying interest for years, the corporations issuing bonds are impressed with the loss of what might have been,—had they insisted on more or different conditions precedent, or on a more satisfactory compliance of such terms and conditions, seek to charge their negligence, to say the least, in executing the power, to a want of legislative power, whereby they can make the bondholder liable, and thus defeat the payment of his bonds, they have sold him.

In this case (*brief of defendant, filed Feb. 9, 1901, p. 38–39*). Defendant makes such an effort. He asks, "If said act of 1857, conferred power on Perry County to issue bonds, what law authorized Perry County Court, or other county officers to call an election, to vote on the proposition for the county to subscribe the stock and issue the bonds."

The Act of Feb. 14, 1857, (*Record p.* 48, Sec. 9), authorizes and empowers the directors to take and receive subscriptions to their said capital stock, on such terms and in such amounts, as they may deem for the interest of the said company; and as they may prescribe by their by-laws and regulations, from any other railroad, or corporation, and from *any county*, city, town or village, and *any such subscription shall be valid and binding upon any railroad* company, corporation,

county, city, town, or village making the same; ***Provided said subscriptions shall be made in every respect, subject to the provisions and restrictions of an Act supplemental to an act entitled "An act to provide for a general system of railroad incorporations," approved November 6, 1849.***

The defendant is a *county* in Illinois, and is a corporation doing business within the jurisdiction of the above law and *proviso*, and in section 9, last above cited, it was authorized to subscribe to the stock of the company, and the subscription was made ***valid and binding, Provided said subscription shall be made in every respect, subject to the provisions and restrictions of the Act approved November 6, 1849.***

We have now legislative power granted *any county*—Perry County, to subscribe to the stock of this railroad, subject to the provisions and restrictions of the Act of November 6, 1849. With this power granted, how shall Perry County exercise it? The Act of November 6, 1849, fully answers the question. On *page 44, of Record, Section 1, reads*, * * * "such city or county may, and are hereby authorized to purchase, or subscribe for shares of the capital stock in any such company, in any sum not exceeding $100,000, for each of such cities or counties; and the *stock so subscribed for, or purchased, shall be under the control of the County Court* of the county or common council of the city making such subscription or purchase, *in all respects as stock owned by individuals.*"

SECTION 2. (*Record p.* 44), of the Act of Nov. 6, 1849, is "that for payment of said stock, the judges of the County Court of the county * * * making such subscription, or purchase, are hereby authorized to borrow money, at a rate not exceeding ten per cent. per annum, and to pledge the faith of the county * * for the annual payment of the interest, and the ultimate redemption of the principal,

or if the said judge * * * should deem it most advisable, they are hereby authorized to pay for such subscription, or purchase, in bonds of the city or county, making such subscription, to be drawn for that purpose, in sums not less than $50,000, bearing interest not exceeding 10 per cent. per annum: *Provided*, that no bond shall be paid out at a rate less than par value."

SECTION 4. Of that same Act, (*Record p.* 44–45), gives full directions for the judges of the County Court to call elections, give 30 days notice of the election, to be held at the usual voting places, to vote upon the proposition of subscribing the amount of stock of the railroad company, named in the election notices. The judges of the County Court are, in case the vote is for the subscription to issue no bonds under this act, excepting for the amount required to be paid at the time of the subscription.

Here then, the County Court who would be the officials for doing such business for their county, by virtue of their office, are in this Act specially named to make the subscription, to call the election, to name in the notices for the election the railroad company to whose stock they deem it advisable to subscribe, the amount to be subscribed, the time which the bonds proposed to be issued are to run, and the interest they are to bear, and all the terms and conditions necessary to be voted upon, to make the subscription to the stock, and to issue and deliver the bonds in payment of the same.

The attorney for the defense asks in his *brief supra*, p. 38–39, some other questions to-wit: What law fixes the time of notice should be given of the election?

"What amount of stock could said county subscribe under said Act?"

"What number of votes were required to carry the proposition?"

"What law fixes and prescribes the time said bonds may run?"

"What law determines whether said bonds may, or may not draw interest?"

"What law fixes the rate of interest they may draw?"

"What law protects the county against these bonds being sold at a discount?"

All of these questions except the last, are already answered above. The County Court makes the subscriptions and controls the stock the same as an individual stockholder. The amount of stock and the time the bonds are to run, and the rate of interest they are to bear, are all first determined by the County Court, and finally by the vote of the electors. The Act of Nov. 6, 1849, fixes 30 days notice as the time for calling the election, and determines the number of affirmative votes necessary to make the subscription. The Act itself (*Section 4, Record p.* 45), as to the amount to be subscribed, says—"and if a majority of the voters of said county * * * shall be in favor of the same, such authorized subscription or purchase, or *any part thereof shall then be made by said judges.*" Suppose the vote was, to subscribe $150,000, and issue that amount of bonds to pay for the same. The Act of Nov. 6, 1849, limited the amount, any city or county could subscribe to $100,000. (See *Section* 1, Act of Nov. 6, 1849, *Record p.* 44.) But in the citation from *Section 4, supra*, authority was given the judges to make *the subscription authorized by the vote, or any part thereof. Record p. 45, Section* 4.

The last question hardly seems worthy of notice. There is no law that can always protect a community, against the rascality of their officials, or their own indifference and negligence. But the act

of November 6, 1849, threw all the usual safeguards around this issue of bonds. And if the people, and lawyers of the defense, had been half as active in preventing the issue of these bonds, as they now are in their efforts to prevent their payment, they never would have been issued. Their courts were open then, and have been ever since. A very brief time would have procured an injunction, had there been any grounds for one.

THE CHESTER AND TAMAROA COAL AND RAILROAD BONDS.

The recitals on these bonds as to the power for their issue is fuller than those of the other issue. The recital is as follows, towit: "This bond is one of a series of bonds, issued by the County of Perry, in payment of $100,000 of the capital stock of the Chester & Tamaroa Coal and Railroad Company, in pursuance of an election held by the legal voters of Perry County, Illinois, on the 19th day of February, 1870, and by virtue of the provisions of an act of the General Assembly of the State of Illinois, entitled "An act supplemental to an an entitled an act to provide for a general system of railroad incorporations, approved November 6th, 1849." *Record p.* 37—38.

The certificates of registration (*Record p.* 33—34), all claim that the bonds were issued *under* and by authority of the provisions of "An act supplemental to an act entitled an act to provide for a general system of railroad incorporations, approved November 6th, 1849."

It will be conceded at once, that this act of November 6th, 1849, gives ample legislative authority for the issue of bonds in payment of subscriptions, voted by the electors of counties and cities. State and Federal Courts have time and again passed upon this question, and we know of no decision holding bonds issued under this act void for want of legislative power.

We submit, therefore, that we have shown that both issues of bonds of the defendant, coupons from which are in controversy in this suit, were issued under the act of November 6th, 1849, and that that act conferred full legislative powers upon the County of Perry to make the subscriptions and to issue the bonds.

II.

Estoppel by recitals.

If there was authority of law for the issue of the bonds, the defendant is estopped from denying recitals made by officials whose duty it was by law to determine the facts stated in the recitals.

Commissioners vs. *Jannary*, 94 U. S. 265.
Town of Coluna vs. *Eaves*, 92 Ill. 432.

As to the Belleville and Illinois Southern Railroad bonds, the position of the defense, "that there is no recitals on the bonds showing for what purpose they were issued, nor as to the authority for their issue, is untenable. *Defendant's Brief, filed Feb.* 9, 1891, *p.* 20.

The recital on these bonds is that they were "*issued under* the authority and requirements of an Act of the Legislature of the State of Illinois, entitled "an act to incorporate the Belleville and Southern Illinois Railroad, approved February 14, 1857." Reference to this act, *Record p.* 48, *Section* 9, shows clearly that the bonds were issued to pay for stock subscribed to the railroad company incorporated by that act. This act and the reference to the act of November 6, 1849, gave abundant legislative power for the issue of these bonds.

Moreover, the sworn certificates of the County Judge for the registration of these bonds, is to the same effect. It is found on (*Record p.* 32), and is as follows, towit: "These bonds ($100,000),

are issued by the County of Perry and State of Illinois, to the Belleville and Southern Illinois Railroad Company, under and by authority of the provisions of an act entitled an act to incorporate the Belleville and Southern Illinois Railroad, approved February 14, 1857, and I, as Judge of the County Court of said county, do hereby certify that all preliminary conditions in the act, in force April 16th, 1869, required to be done to authorize the registration of these bonds and entitle them to the benefits of the said act last above referred to, have been fully complied with, to the best of my knowledge and belief." Here the recitals on the bonds, and the sworn certificates of the Judge of the County Court, show clearly the authority for, and the purpose for which, they were issued. But the sworn certificate of the County Court Judge goes further, and proves that all preliminary conditions precedent, required by the registration act, have been complied with. It will be seen by reference to that act (*Record p.* 51, *Section* 7), that these precedent conditions cover every thing, that is necessary in the execution of the power in the election; the subscription and the issue of the bonds. The bonds cannot be registered until the railroad is completed, and cars run thereon. A majority of the voters must have voted in favor of the donation or subscription. The preliminary conditions which the public corporations are by this act authorized to make, precedent to the issue of the bonds, must be complied with before the bonds, subscriptions, or donations are valid and binding. The act provides that the presiding Judge of the County Court, in counties, shall certify, under oath, *that all the preliminary* conditions, in this act required to be done to authorize the registration of such bonds, and to entitle them to the benefits of this act, have been complied with, and shall transmit the same to the State Auditor, with a statement of the date, amount, number, maturity, and rate of interest of such bonds, and to what company, and

under what law issued. And thereupon the said bonds shall be subject to registration by the State Auditor, as hereinbefore provided.

The United States Supreme Court has, in a late case, construed the legal effect of this Certificate of Registration, made by the chief official of the municipality, whose duty it was by law to determine the facts recited. This decision, it seems to us, is conclusive, and establishes the validity of the plaintiff's bonds and coupons in the case at bar.

The case is *Cairo* vs. *Zane*, 149 U. S., 122, decided April 24, 1893, and *is the latest and most important decision of this court on the subject.* In many respects that case was similar to the case at bar.

The court says, *p.* 142: "But surely these recitals, and this certificate have significance. It is unnecessary to affirm that the certificates are so 'clear and unambiguous' (*School District* vs. *Stone*, 106 U. S., 183-187) as to estop the city from showing that the bonds were issued in violation, or without authority, of law, or that they, in conjunction with the certificate, foreclose all possible defenses; *but, when the law of the State provides for registry of municipal bonds, and a certificate thereof, such certificate should be held as sufficient evidence, to the purchaser, of the existence of those facts upon which alone, bonds can be registered.* If the plaintiff in this case, not resting upon the mere terms of the certificate, had examined the records of the auditor's office, he would have found there, the certificate, under oath, of the mayor of the city, of the election, its date, and facts necessary to warrant the issue of the bonds, such officer being the one named in the statute, as the one to furnish, to the auditor, the evidence necessary to justify the registry. Can it be that a purchaser, with this evidence before him, is not protected by the state-

ment, upon the face of the bonds, that they were issued in payment of a subscription? Is it his duty to examine all the proceedings, to see whether, that which was a subscription in the first instance, was called a subscription all the way through, and was named a subscription in the bonds, had not been transformed, by some action of the city council, into a donation? It will be borne in mind that it is not a matter of law, but of fact, in respect to which an estoppel is urged against the city, by virtue of the recitals, and the fact of registry. But it is unnecessary to pursue this line of thought further. We are of opinion that the bonds were properly held valid in the hands of a *bona fide* holder."

We have quoted at length from this case, because we deem it a very important one. It defines, perhaps, for the first time, the legal effects of these certificates for registration, made under oath to the State Auditor, to show that the bonds are entitled to registration, because all the conditions required by the Act of April 16, 1869, have been complied with. The court clearly holds that the sworn certificate of the official named in the Act, "*is sufficient evidence to a purchaser of the existence of those facts upon which, alone bonds can be registered.*"

If these certificates which were in evidence, three of them, (*Record p.* 32, 33 and 34), are sufficient evidence to a purchaser of the existence of those facts upon which alone bonds can be registered; they must be sufficient evidence for courts, and every one interested on the subject, and the contention of the defense must cease, and the bonds and coupons be held valid obligations of the defendant. For the requirements of the Act, as shown above, cover every point raised by the defendant in this case.

It is an old and well settled rule of the Federal Courts, that

recitals upon the bonds when made by officials appointed by law to determine the facts recited, estop the corporation from denying the truth of the facts recited on the bonds, when in the hands of *bona fide* holders.

Marcy vs. *Township of Oswego*, 92, U. S., 638.
Coloma vs. *Eaves*, 92, U. S., 491.
Town of Venice vs. *Murdock* 92, id. 494.
Knox vs. *Aspinwall*, 21 How, 544.

The recitals on the Chester & Tamaroa Coal and Railroad issue of bonds, are as follows, to-wit: "This bond is one of a series of bonds issued by the County of Perry, in payment of $100,000 of the capital stock of the Chester & Tamaroa Coal and Railroad Company, in pursuance of an election held by the legal voters of Perry County, Illinois, on the 19th day of February, 1870, and by virtue of the provisions of an Act of the General Assembly of the State of Illinois, entitled "an act supplemental to an act entitled an act to provide for a general system of railroad incorporation," approved November 6, 1849, and for the payment of said sum of money and accruing interest thereon, and in the manner aforesaid, the faith of the County of Perry, State of Illinois, is hereby irrevocably pledged, as also its property revenue and resources." *Record p.* 37.

These recitals estop the county from denying the election, its legality; and the subscription of $100,000 to the capital stock of the railroad, and the legal compliance with all of the requirements of the act of November 6, 1849.

In case of *Buchanan* vs. *Litchfield*, 102 U. S. 278, the Court held, "such recitals import a compliance with the statute and the township, according to the uniform decisions of this Court, is estopped to assert, as against a *bona fide* holder for value, that such recitals are untrue." *See Ibid.* 286 *and citations.*

Mont Clair vs. *Ramsdell*, 107 U. S. 147.

Mercy vs. *Oswego*, 92 Id. 637.

In suppport of the above doctrine of that Court are the following prominent cases from Illinois, to-wit:

Harter v *Kernochan*, 103 U. S., 562.

Pana vs. *Bowler*, 107 Id. 542.

Insurance Co. vs. *Bruce*, 105 Id. 332.

City of Cairo vs. *Zane*, 149 Id. 122.

In *Nugent* vs. *Supervisors*, 19 Wall. 241, the court says: "When, therefore, they make a subscription, and issue county bonds in payment, it may fairly be presumed, in favor of an innocent purchaser of the bonds, that the conditions, which the law attached to the exercise of the power, have been fulfilled."

Pendleton vs. *Amy*, 13 Wall., 305

Walnut vs. *Wade*, 102 U. S., 633.

Clay County vs. *Society for Savings*, 104 Id., 579.

The power existing, the municipality may be estopped, by recitals, to prove irregularities in the exercise of that power; or, when the law prescribes conditions upon the exercise of the power granted, and commits to the officers of such municipality, the determination of the question whether those conditions have been performed, the corporation will be estopped, by the recitals, which import such performance."

Northwestern Bank vs. *Porter Twp.*, 110 U. S., 619.

County of Moultrie vs *Savings Bank*, 92 Id., 631.

Rock Creek vs. *Strong*, 97 Id., 271.

Mercer vs. *Hackett*, 1 Wall., 83.

County of Sac vs. *Cromwell*, 96 U. S., 51.

In *Marcy* vs *Oswego*, 92, U. S., 638, the court say: "All prerequisite facts to the execution and issue of the bonds were, by the statute, referred to the Board of County Commissioners, and the plaintiff was not bound, when he purchased, to look beyond the legislative Act and the recitals of the bonds."

"If there be lawful authority for the municipality to issue its bonds, the omission of formalities and ceremonies, or the existence of fraud on the part of agents of the municipality issuing the bonds, cannot be urged against the *bona fide* holder seeking to enforce them."

Kennicott vs. *Supervisors*, 16 Wall. 464.
East Lincoln vs. *Davenport*, 92 U. S., 801.
County vs. *Ray*, 96 Id., 675.
Johnson Co. vs. *Stark*, 24 Ill., 75.

The State Supreme Court of Illinois has, in many cases, held to the doctrine of estoppel, by recitals, on municipal bonds, to the full extent we claim, when in the hands of *bona fide* holders.

We only cite a few cases, as we do not deem it necessary in a Federal Court, when commercial paper is involved.

Board of Supervisors of Mercer Co. vs. *Hubbard*, 45 Ills., 139.
Keithsburger vs. *Frick*, 34 Ill., 405.
Burr vs. *Carbondale*, 76 Ill., 470.
Bolton vs. *Bd. of Education*, 1 App. Reps. Ill., 200—202.

In the case of *Burr* vs. *Carbondale*, *supra*, Illinois Supreme Court, the doctrine of estoppel by recitals, as laid down by *Dillon on Mun Corps.* Vol. 1, Sec. 524, the same as adhered to in the Federal Supreme Court, from *Knox County* vs. *Aspinwall*, 21 How. 539, to *City*

of Cairo vs. *Zane* 149 U. S., 122, is applied, and the reference to Dillon *supra*, cited with approval, and as authority.

ACT OF APRIL 16, 1869, NOT REFERRED TO IN THE RECITALS.

It will be observed that the recitals in neither issue of the bonds make any reference whatever to the act of April 16, 1869. *Record p.* 36—37.

In the order for the election, in the case of the issue of bonds to the Chester & Tamaroa Coal and Railroad Company, it is stated that the bonds are to be registered under that act (*Record p.* 26), and the same reference is substantially made as to the issue to the Belleville & Southern Illinois Railroad Company. *Record p.* 24.

This is important, as the recitals go with the bonds, and are an exhibit to the purchaser, of the admitted facts, upon which they were issued. They are a part of the contract between every purchaser and the corporation issuing them, and are as sacred as any part of the bond. The conditions upon which the bonds were to be issued, expressed in the call for the election, never accompany the bonds, when sold in the distant markets. The statements made in the bonds, a knowledge of the requirements of the registration act, and the acts under which the recitals claim that the bonds were issued, are accepted by all, that all precedent conditions necessary to the validity of the bonds have been complied with. This is the rule of the law merchant, and the protection of all *bona fide* holders of commercial paper. It is the well established doctrine of both State and Federal Courts, and of the text writers.

A municipality *waives* all failures to comply with precedent conconditions when it executes and delivers its negotiable bonds.

Chiniquy vs. *The People*, 78 Ill., 572.

County of Randolph vs. *Post*, 93 U. S. 502.
Jackson County vs. *Brush*, 77 Ill., 59.

There can be no question but that there was power for the vote when it was taken for both issues of the bonds. This being so, the *bona fide* holder of the bonds had a legal right to rely upon the recitals on the bonds as to the legal execution of the bonds. The county defendant is estopped from denying the statements made in the recitals of its own officials, appointed by law to determine the facts recited on the bonds, and within the scope of their authority. We invite the special attention of the court, to the latest decision of this court upon this subject, found in the case of City of Cairo vs. Zane, 149 U. S. 122, decided April 24, 1893.

Quincy vs. *Cooke*, 107 Id., 549.
Moultrie County vs. *Savings Bank*, 92 Id., 633.

"It is presumed, when such bonds are found in circulation, that the legal steps have been taken to authorize their issue."

Maxey vs. *Williamson Co.*, 72 Ills,, 209.

III.

Both Issues of the Bonds Are Within the Proviso of the Prohibitory Amendment of the Constitution of 1870, in Force July 2, 1870, and Within the Exceptions of the Schedule.

The *Proviso* (*Record, p. 51*) in the Prohibitory amendment to the Constitution of 1870, in force July 2, 1870, makes but one condition to bring a case *within* any and all effects of that amendment. That is, to make "*such subscriptions, where the same have been authorized, under existing laws, by a vote of the people of such municipalities, prior to such adoption.*" In addition to this, the

Schedule says: "Section 1. "That all the laws in force at the adoption of this Constitution, not inconsistent therewith, and all *rights, actions, prosecutions, claims and contracts, of this State, or individuals, or bodies corporate, shall continue to be as valid as if this Constitution had not been adopted.*"

We have shown a vote for the subscription of $100,000, to the Chester & Tamaroa Coal and Railroad Company, on the 19th day of February, 1870, (*Record, pp. 37, 31, 28 and 27*) and a vote for the subscription of $100,000 to the stock of the Belleville and Southern Railroad Company, July 3, 1869, (*Record, pp. 24 and 25*). Both of these elections received the required number of votes and were held July 3, 1869, and February 19, 1870, before the Prohibitory amendment of July 2, 1870, became effective.

The vote in each of these cases created the debt on the part of the electors, and was their order for, and their subscription to, the stock. All that followed was the clerical work of the officials in issuing the bonds, *the evidences of the debt only*, and the official signing of, and receiving of, the certificate of stock in payment of the bonds delivered. The vote in each case established a *right, an action, procedure, claim* and *contract*, in the language of the schedule, that could have been enforced at law, and clearly brings this case within the *proviso* of the prohibitory amendment, and section one of the schedule, (*See laws relied upon—proviso in the amendment and the schedule.*

In Harter vs. *Kernochan*, 103 U. S., 573, the Court says: "*The vote to create the debt, if authrized by law and had in pursuance of law, would have been the essential act to create the debt.*"

People vs. *Logan County*, 63 Ill., 338.

Hensley Township vs. *People, ex rel.* 84 Ill., 547.

Again in *Moultrie Co.* vs. *Savings Bank*, 92 U. S., 631, the court referring to the legal effect of the vote said—"A valid contract existed between the county and the company, which, when the new constitution took effect, authorized the subsequent delivery of the bonds. The power to subscribe carried with it the authority to issue bonds for the sum subscribed. And the subscription being valid, the bonds are equally so." "The constitution of Illinois, which took effect during the year (1870), does not attempt to impair the obligations of any prior contract in regard to them, nor prohibit the issue of such as were necessary to give effect to a donation so adopted."

Clay County v. *Society of Savings*, 104 U. S., 579.

From the above, it is evident that the bonds of each issue now under consideration, although voted *before* the adoption of the constitution and the prohibitory amendment, and issued *after* that instrument became effective, July 2, 1870, cannot be affected by either of those instruments; but must be considered, and all legal questions concerning them decided, the same as if the Constitution and the prohibitory amendment had not been been adopted.

IV.

THE BURDEN OF PROOF IS NOT UPON THE BONA FIDE HOLDER OF ILLINOIS MUNICIPAL BONDS, VOTED BEFORE THE PROHIBITORY AMENDMENT TO THE CONSTITUTION OF 1870 BECAME EFFECTIVE, JULY 2, 1870, AND ISSUED AFTER THAT DATE.

The *proviso* of the prohibitory amendment of July 2, 1870, is as follows, towit: "*Provided*, however, that the adoption of this article shall not be construed as affecting the rights of any such municipality, to make such subscriptions *where the same have been authorized, under existing laws, by a vote of the people of such municipality prior to such adoption.*"

This *proviso* does not in any manner change, or in any way affect the rule of evidence applicable to negotiable bonds. The only effect of it, is to save from the prohibitory power of the amendment, such subscriptions and bonds, issued to pay the same, *as were authorized under existing laws, by a vote of the people, prior to the adoption of the Constitution.*

A *bona fide* holder of such a bond, with all the indicia of corporate power, covering it, and attached to it, and registered by the Auditor of State, under his official seal, and showing upon its face, that it was issued by virtue of a majority, or legal vote, or pursuant to law, on any date prior to the adoption of the Constitution, July 2, 1870, offered under a proper declaration, with proper averments; the burden of proof, under all rules of evidence, is upon the defendant, to show that the bond is not within the *proviso*, when by the recitals on its face, it declares it is.

Oregon vs. *Jennings*, 119, U. S. 74.

The ordinary rules of commercial law apply, after the power of the legislature, to make the subscription and hold the vote, has been shown. This was necessary before, as well as since the adoption of the Constitution. This question has been settled by the United States Supreme Court. In *Oregon* vs. *Jennings*, 119 U. S., 74, the court say: (p. 93) "The provision of Sec. 12, of Art. 9, of the Constitution of Illinois, did not introduce any new rule of evidence in regard to the mode of proving in favor of a *bona fide* holder, the compliance with the vote of the people."

The *Eagle* vs. *Kohn* case, 84 Ill., 292, decided September, 1876, more than two years after the date of the last of the issue of Perry County bonds, under consideration; and subsequent cases, decided under the rule therein laid down in that case as to recitals, and usually quoted to wit:

Richardson vs. *People*, 92 Ill., 450.
Prairie vs. *Lloyd*, 94 Id., 179.
Oastott vs. *People*, 123 Id., 489.
Eddy vs. *People*, 127 Id. 428, and the
German Savings Bank vs. *Franklin* Co., 128 U. S., 526,

can in no way affect this case because they were all decided long after the date of the bonds in the case at bar, which was January 1, 1871, and July 1 and January 1, 1872.

Moreover, all the above decisions, and every case cited by the defendant, adverse to the binding effect of recitals on bonds, in the hands of *bona fide* holders, made by officials, whose duty it was, by law, to determine the facts recited, have been overruled, time and again, by this Honorable Court. And, as late as April 24, 1893, in the very important case of the *City of Cairo* vs. *Zane*, 149 U. S., 122.

The settled rule, at the time the bonds and coupons in issue in the case at bar were voted and issued, was that laid down in the leading case of *Knox County* vs. *Aspinwall*, 21 How., 544, and restated in the *Town of Coloma* vs. *Eaves*, 92 U. S., 484. In that case the court says: "Where, by the legislative enactment, authority has been given to a municipality, or to its officers, to subscribe to the stock of a railroad company, and to issue municipal bonds in payment, but only on some precedent conditions, such as a popular vote favoring the subscription, and, where it may be gathered from the enactment, that the officers of the municipality were invested with power to decide whether that condition has been complied with, their recital that it has been, made in the bonds issued by them, and held by a *bona fide* purchaser, is *conclusive* of the fact, and binding upon the municipality; for the recital is, itself, a decision of the fact by the appointed tribunal."

The above is exactly our case at bar. Again, in the case of *Commissioners* vs. *January*, 94 U. S., 265, the doctrine is restated as follows, to-wit: "This act authorized the commissioners to issue the bonds, when the requirements of the law had been complied with; but left the compliance to be established, in such a case, by the recitals on the bonds, made by the designated authority.

CASES OVERRULED.

Many of the cases usually cited by the defense, as to the question of the burden of proof, have no application to the case at bar; for the reason that they were mandamus cases to compel the issue of bonds, and between original parties. In such cases, no interests of third parties had attached, no bonds issued, and no recitals of the corporate officials made to bind the corporations. The rules of commercial law did not apply, and there could be no *bona fide* rights to be protected.

It was a mandamus proceeding, to compel the issue of bonds in the often quoted cases of,—

Viliey vs. *Thompson*, 44 Ill., 12.
Harding vs. *R. R. Co.*, 65 Id., 90.
People vs. *Jackson Co.*, 92 Id., 441.

Many of the cases cited by the defense, have long since been overruled by the United States Supreme Court. The following are a few such cases:

Williams vs. *Town of Roberts*, 88 Ill., 1, overruled by
Roberts vs. *Bolles*, 101 U. S., 128.

Marshall Co. vs. *Cook*, 38 Ill., 44; overruled on same issue of bonds by
Supervisors vs. *Schenck*, 5 Wall., 772.

Lippincott vs. *Town of Pana*, 92 Ill., 34; overruled on same issue of bonds by

Bowler vs. *Pana*, 107 U. S., 529.

In the cases of *Borah* vs. *Nelson*, 140 U. S., 47; *Harter* vs. *Kernochan*, 103 Id., 562; *Bonham* vs. *Needles*, 103 Id., 648, the issue of bonds was decided invalid by the State Court; the cases removed to the Federal Courts and reversed.

City of Cairo vs. *Zane*, 149 U. S., 122, decided April 24, 1893, overrules all prior cases, adverse to the binding effect of recitals, made by officials, whose duty it was to determine the facts recited, on municipal bonds, issued *after* the adoption of the Constitution, and the Prohibitory amendment, of 1870, in payment of subscriptions to stock of railroad companies, voted *before* the adoption of those instruments.

In *Commissioners* v. *January*, 94 U. S. 265, the Court says: "This act authorized the commissioners to issue the bonds when the requirements of the law had been complied with.

These corporate officials were thus constituted *a tribunal for the adjustment of* ALL QUESTIONS TOUCHING THE SUBJECT. They *were clothed with power and charged with the duty to decide them.* No appeal was provided for. Their issuing the bonds was the reflex and embodiment of their judgment that it was proper to do so. It implies a prior determination to that effect. The fact carries with it this presumption. The bonds recite that they were issued in conformity to the law, and in pursuance of the election held April 6, 1869. It is true they refer to the wrong statute, but *falsa demonstratio non nocet.* The bad here does not hurt the good. The *act of the Commissioners was the act of the county, and the county is conclusively bound by what they have done.* As between the county and a *bona fide* holder, NO QUESTION INVOLV-

ING THE INFIRMITY OF THE SECURITIES CAN BE RAISED. The principle of estoppel applies and precludes the obligor from interposing such defense." * * * "Taking and holding the certificates of stock, issuing and delivering the bonds, and paying the interest for a time, *cured the defect as to the order for an election*, if any such existed. *Under the circumstances, a bona fide taker had a right to presume that everything had been properly done, which was necessary to the validity of the bonds.* When this suit was instituted, the objections which have been made, *were too late.*"

In the case at bar, as in the above, the officials, the County Court, are named in the legislative act, to make the decision as to the fulfillment of precedent conditions, and recite the results exactly as they have done.

In the same line are the following important cases.

Pine Grove vs. *Talcott*, 19 Wall, 666.
Supervisors vs. *Schenck*, 5, Id; 772.
City of Lexington vs. *Butler*, 14, Id, 283.
Lynde vs. *The County*, 16, Id, 6.
Meyer vs. *Muscatine*, 1, Id, 385.

Later, the following cases: *Insurance Co.* vs. *Bruce*, (an Illinois case), 105 U. S., 328, construing the act of April 16, 1869.

Brooklyn vs. *Insurance Co.*, 99 U. S, 362.
Oregon vs. *Jennings*, 119 Id., 74.
Harter vs. *Kernochan*, 103 Id., 570.
City of Cairo vs. *Zane*, 149 Id., 122, decided Apr. 24, 1893.

It will thus be seen that this has been the continued rule of this court from 21 How, to 149th U. S. Report, and to the last term of this court.

V.

IRREGULARITIES IN THE EXECUTION OF THE POWER IN THE ISSUING OF MUNICIPAL BONDS, CANNOT AFFECT THE RIGHTS OF A *bona fide* HOLDER OF THE BONDS.

The great contention of the defense as we understand their brief, *supra*, is, that there was no legal election proved, and therefore no valid subscription made, and no valid bonds issued by the defendant; claiming that where subscriptions were voted *before* the prohibitory amendment of July 2, 1870, became effective, and bonds issued in payment thereof *after* the adoption of that amendment, the burden of proving an election was upon the holder of the bonds. And that he must prove every step in the call for the election, notices of it, the voting and the results of the election, *entirely independent of any and all recitals upon the bonds, or of the officials issuing them.*

In the case at bar, the evidence is overwhelming, that there was an election legally *called and held in accordance with law*, and that the requisite number of electors required by the Act granting the power, that of Nov. 6, 1849, voted in favor of the subscriptions and the bonds issued to both roads.

In the subscription and issue of $100,000 of bonds to the Belleville & Southern Illinois Railroad Company, the election was legal in all respects. The order was of the 24th day of May, 1869, for an election to be held July 3, 1869, over 30 days notice, the time required by the Act of Nov. 6, 1849, that gave the legislative authority. *Record p.* 24 and 45.

The subscription was made "in accordance with an order of the Co. Court, made May 24, 1869, submitting to the legal voters of Perry County, the question of subscribing $150,000 to the capital stock of said company. Under which order a special election was held on the

3d day of July, 1869, and a majority of legal voters of said county, voted for such subscription."

It is true that the amount named in the order for the election (*Record p.* 24), was $150,000, and a majority of the legal voters voted in favor of that sum. But as shown, *supra*, the County Court had authority under *Act of Nov. 6, 1849. Record p.* 45, to subscribe the amount voted, or ANY PART THEREOF, and issue bonds in payment of the same. The bonds were executed and delivered to the President and Secretary of the Railroad Company, who thereupon delivered to said Court the certificate of stock for $100,000 copy of which is found in the *Record p.* 25.

In the subscription the issue $100,000 to the Chester & Tamaroa Coal and Railroad Co., the order for the election was January 18, 1870, to be held February 19, 1870. One of the conditions in the call for the election was that $50,000 of the bonds should be issued to the Railroad Company, when the road was completed, and passenger and freight cars run thereon to Pinckneyville, and depot buildings, built in Pinckneyville and in Tamaroa. The other $50,000 bonds to issue to the Railroad Company, when their road was completed and cars run thereon, and necessary depot building erected as required in the order. *Record p.* 26–27.

In the order for the subscription, March 8, 1870, the Court say: "and whereas, *in pursuance of said order*, (Jan. 18, 1870, *Record p.* 26,) and PUBLISHED NOTICES THEREOF AS REQUIRED BY LAW, SAID ELECTION WAS HELD IN SAID COUNTY *on the 19th day of February*, A. D. 1870; and whereas, it appears from the returns of said election on file in the County Clerk's office of said county, and THE CERTIFICATE OF THE BOARD OF CANVASSERS THAT A MAJORITY OF THE LEGAL VOTERS OF SAID COUNTY OF PERRY, (assuming the standard required by law, and the said order, of Court, taking as a basis the number of

votes cast at the last general election for county officers), HAVING VOTED IN FAVOR OF SUBSCRIBING SAID STOCK; NOW, therefore, it is ordered by the Court, in PURSUANCE of said order of Court, and THE ELECTION HELD THEREUNDER, AND THE STATUTES IN SUCH CASE MADE AND PROVIDED, that the County of Perry, in the State of Illinois, do subscribe $100,000 to the capital stock of the Chester & Tamaroa Railroad Co. * * * and it is further ordered by said Court, that the judges of the Court subscribe said stock on the books of said company, and that the same be attested by the clerk of this Court, under seal of the Court." *Record p. 27.*

On the 8th of June, a certificate of the stock of the Chester & Tamaroa Coal and Railroad Co., for $100,000, shares 1,000, at $100 each, was delivered to the County Court, and the certificate was accepted and ordered to be recorded and filed. *Record p. 28.*

In the order for isssuing the first $50,000, of the bonds (*Record p.29*). Theorder for the election is recited, and that "*in pursuance of the election held at the several precincts in said county, on the 19th day of Feb. 1870, in pursuance of the said order recited, and the notices of the County Clerk thereof, and the statutes in such cases, made and provided, etc.*, and reciting the completion of the road in accordance with the terms and conditions, ordered the issuing of the $50,000 of bonds, "*and that the judge of the County Court be authorized to certify under oath, that all the conditions of the order made on the 18th day of January, 1870, above recited, have been complied with by the Chester & Tamaroa Coal and R. R. Co.*," and that said bonds be registered and paid in pursuance of an act of the General Assembly of the State of Illinois, entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns." *Record p. 29–30.*

On the 6th of December, 1871, an order was made by the County Court, for the execution and delivery of the remaining $50,000 of

bonds, dated January 1, 1872, in full payment of $100,000, of stock, and that the certificate of stock, formerly issued, to the county, be cancelled and a new certificate issued.

All this evidence, which is taken *from the records of the defendant county*, and which is the best possible evidence, and *not recitals*, proves beyond question that the elections were held *in every respect*, ACCORDING TO LAW, and that *a majority of legal votes*, according to the standard laid down in the act of November 6, 1849, under which the election was held, were cast for the subscriptions, and the issue of the bonds exactly they were issued.

The adoption of the Constitution and the prohibitory amendment, do not *in any way affect this evidence*. It would have been entirely competent and relevant *before* the adoption of the Constitution, and is equally so *after* its adoption. In fact, as shown, *supra*, these bonds come *within the proviso*, and the , and the evidence proving their validity, are to be considered, the same as if that instrument had never been adopted. See *Schedule—Laws relied upon.*

This record evidence, taken from defendant's own books, is in no sense ambiguous, or in any sense uncertain, that it should require oral testimony to make it clear and potent The court unquestionably erred in admitting any oral evidence as to the elections, and the fulfillment of precedent conditions, over the above positive ond overwhelming written evidence.

Our contention is, that while compelled by the rulings of the court, contrary to law, as we have shown, *supra*, to assume the burden of proof in this case, we *have proved*, by the best evidence possible, every material point necessary to sustain the validity of the bonds, and that, too, from aliunde testimony, and *outside of all recitals on the bonds.*

If this be true, what becomes of the fine-spun thoeries of the defense, as laid down in the *Eagle* vs. *Kohn*, and *Onstott* vs. *The People*, *cases supra*. But add to this record evidence, the recitals on the bonds, and the sworn certificates for registration, which, as *bona fide* holders, we have a legal right to do, and there is not a shred of anything left for the defense in the case. *Record p.* 32—33—36—37.

According to this record evidence, that no one can challenge, and *outside of all recitals*, all preliminary conditions, named in the order for the election of May 24, 1869, (*Record p.* 24), and of January, 1870, were literally fulfilled, and complied with before the bonds were delivered. But suppose the court was not in error in admitting oral testimony as to the machine shops being built at East St. Louis instead of Duquoin, where it is claimed they were to have been built, according to the order for the vote. (*Record p.* 53.) and also, as to the elections. (*Record p.* 93 to 94) the case then presents a conflict of testimony. The record evidence, which is full, and oft repeated, at widely different dates, *that all conditions precedent*, which includes the building of the shops at Duquoin, had been complied with, against the oral testimony, that the shops had not been built at Duquoin, but at East St. Louis. The record evidence *must prevail* in such a conflict of testimony, according to all rules of evidence. This is primal, and needs no citations.

But in this case, the plaintiff had nothing whatever, as shown *supra*, to do with the question *where* the machine shops were built, any more than whether they were built at all. It did not concern him, as he was a *bona fide* holder of his bonds, and was thus protected by the recitals on the bonds, and the certificates.

City of Cairo vs. *Zane*, 149 U. S. 122.

VI.

Onstott vs. The People, ex rel, 123 Ill., 489, Considered.

Decided January 20, 1888.

The defendant in *brief, filed Feb.* 6, 1891, *p.* 53, claims that the facts in the *Onstott* case are the same, as in the case at bar. They ought to be, being an exparte effort to defeat these very bonds or the levy and collection of taxes for interest on them, and conducted by the same attorney, Thomas Layman. It is also claimed that that case gives a judicial comstruction to the prohibitory amendment to the Constitution, in force July 2, 1870. A construction, it is claimed, which is in harmony with this court's decisions, and the State Supreme Court, concerning municipal bonds, issued *after* the the adoption of that amendment, July 2, 1870, but voted *before*. And that such claimed decisions of the State and Federal Supreme Courts had become a "rule of property."

He could hardly have made a greater mistake. The fact is, every principle of any significance in the *Onstott* case was overruled by the case of *Cairo City* vs. *Zane*, 149 U. S., 122, decided April 24, 1893.

Moreover, besides being an exparte case entirely, with all bond holders, and they the only parties interested, save a tax payer, purposely kept in ignorance of the pending of such a suit, every single case cited by that court, in support of its decision, has long since been overruled by this court, and the counsellor might have known it.

See cases cited by Wm. B. Gilbert, for plaintiff in error, *Cairo* vs. *Zane*, 149 U. S., 134, 135, and 136.

Again, every single case cited, by the court below, in the case at bar, has been overruled by this court, and the counsellor for the defense ought to have known it. The cases cited, *Record p.* 112, are *The German Savings Bank* vs. *Franklin Co.*, 128 U. S., 526, a case in which the district judge was counsellor before his appointment to his present office, and overruled by *Cairo* vs. *Zane*, *supra*; the case of *Engle* vs. *Kohn*, 84 Ill., 290, overruled by the U. S. Circuit Court in Chicago, in a case not reported.

Richerson vs. *The People*, 115 Ill., 450, and
Onstott vs. *The People*, 123 Id, 489, with

all of these above cases have recently been overruled, April 24,1893, by the decision in *Cairo City* vs. *Zane*, 149 U. S., 122. The doctrine announced in all of these cases, cited by the court below, has been constantly opposed and overruled, by this court, from the earliest bond litigation, to the present time.

The failure of the court, in the *Onstott* case, *supra*, to recognize the rights of *bona fide* holders of bonds, issued *since* the Prohibitory amendment became effective, and voted *before*, and the binding force of the recitals of officials, on such bonds, is the same as that of the court below, in this case.

But, counsel for the defense is mistaken, when he says that the doctrine in the *Onstott* case has become "*the rule of property*," (*Brief filed Feby. 9, 1891, p. 53*) on the subject of municipal subscriptions, voted *before* the adoption of the Constitution and the prohibitory amendment of 1870, and issued *after* their adoption.

The records and decisions are with us, on this question, with *singular unanimity and force*. The doctrine we advocate is an old and well settled one, as shown *supra*; but the application of it, under the peculiar circumstances, brought into existence by the

adoption of the Constitution of 1870, and the *Proviso* of the prohibitory amendment, and the schedule of exceptions, in this State, has caused much litigation.

All of the following cases, arising in Illinois, in which the *vote* for the subscription was had *before* the adoption of the Constitution and the Prohibitory amendment, and the bonds in payment of the subscriptions, issued *after* their adoption, *this question being involved in each of them; the bonds were held valid on the strength of the recitals.*

County of Moultrie vs. *Savings Bank*, 92 U. S., 631; decided Oct. 1875.
Town of Coloma vs. *Eaves*. 92 Id., 484, decided Oct. 1875.
County of Warren vs. *Marcy*, 97 Id., 96.
Harter vs. *Kerochan*, 103 Id., 562.
Bonhan vs. *Needles*, 103 Id., 648.
Wade vs. *Walnut*, 103 Id., 683.
County of Clay vs. *Society for Savings*, 104 Id.
Insurance Co. vs. *Bruce*, 105, Id., 328.
Pana vs. *Bowler*, 107 Id., 539.
Oregon vs. *Jennings*, 119 Id., 74.
City of Cairo vs. *Zane*, 149 Id., 122.

This array of unquestioned decisions by this Honorable Court, must, it seems to us, forever settle the question of the effect of recitals upon municipal bonds voted *before* and issued *after* the adoption of the constitution and the prohibisory amendment of 1870, and also what is "*the rule of property*" in Illinois, on this subject.

The first case cited *supra*, was decided *Oct. 1875*. The *Oustott* sace was decided *Jan. 1888*, granting the defense every possible latitude, and in any possible view of the case, there can be found at most

but an irregularity in the exercise of the power. Taking the theory of the defense, and there was an absolute and literal compliance with every preliminary condition, voted upon save perhaps, the erecting of the machine shops at Duquoin. We have already shown that a *bona fide* holder of the bonds had nothing to do with any such questions.

The elections we have shown were regularly held, and the required majority favored the subscriptions and the issuing of the bonds. That these were elections legally held cannot be doubted; that the legal majority required for the subscriptions and the issue of the bonds cast their votes therefor. The evidence from the records of the county is conclusive, as to the election of Feb. 14, 1870. (*Record p.* 27.) "and whereas, *it appers form the returns of said election* on file in the County Clerk's office of said county, and *the certificates of the Board of Canvassers, that* a majority of the legal voters of said County of Perry, (assuming the standard required by law, and the said order of Court, taking as a basis the number of votes cast at the last general election for county officers), having voted in favor of subscribing." Here the *returns on file* in the clerk's office, and *certificates of the Board of Canvassers*, show the requisite majority of the votes. If that number of votes were not found over 17 years after in an effort to defeat the $100,000 of bonds issued upon that vote, then the presumption is exceedingly strong that the ballots and returns have been tampered with, and changed. But according to defefendant's alleged testimony, unlawfully admitted there were votes enough cast more than the required majority. But it is claimed that in several precincts the returns of the judges of the election were properly filled up with the number of ballots cast, and everything was regular, except the formal signature of the judges of the election. The canvassing board do not seem to have objected to the returns of these precincts, and they were not then considered sufficiently in-

formal to be rejected. This is evident from the certificates of the canvassing board, the returning judges, the canvassing board, and the County Court acted upon this election. The voters acquiesced in the election for over 17 years. No one can believe, what the defense ask us to believe, that all the judges that held this election, and the clerks, and the canvassing board, and the county board, and the County Clerk deliberately purjured themselves and made false returns, and certificates, and county records, and recitals on the bonds to deceive their own people who had elected them to places of trust and honor, and perpetuated a fraud upon all who should purchase heir bonds. We do not believe this for a moment, for proofs shows a valid election. If there was anything objectionable in the failure of some the judges and clerks to formally sign the returns, it would not invalidate the bonds. Voters are not to be deprived of expressing their opinions at the ballot box by such trifles.

Such informalities cannot invalidate an election, nor in any way affect the rights of a *bona fide* nolder of municipal bonds, issued thereunder. Such an informality would be more potent in a contest between the railroad company and the county, to compel the issue of the bonds to pay for a subscription thus voted.

In *Pana* v. *Bowler*, 107 U. S., 541, the Court say: "Our conclusion is, therefore, that the bonds in question in this case, are valid, in the hands of a *bona fide* holder, notwithstanding the irregularity in the conduct of the election, by which they were claimed to authorized."

The record evidence as to the subscription of $100,000, to the capital stock of the Belleville & Southern Illinois Railroad Company, is as follows, towit: "*Under which order a special election was held, on the third day of July, 1869, and a majority of the legal voters of said County voted for such subscription.*"

The terms and condition for the vote and subscription, and the issue of the bonds, are referred to in the Certificate, and recitals, (*Record p.* 32—36), as issued under the act of Feb. 14, 1857, but that act has a proviso, *Sec.* 9, *Record p.* 48, that "*Said subscription shall be made in every respect subject to the provisions and restrictions of an act supplemental to an act entitled 'An act to provide for a general system of railroad incorporations,' approved November 6, 1849.*"

All the requirements of the act of November 6, 1849, were literally carried into effect, as to the election, the subscriptions and the issue of the bonds.

In both issues, the bonds were delivered and the certificates of the railroad stock presented to the County Court, and accepted, ordered recorded and filed, by that Court. *Record p.* 25—28.

VI

Federal Courts are not Obliged to Follow State Courts on Questions Involving the Law Merchant.

All the questions involved in the case at bar, are concerning negotiable securities, and under the well established rule, are especially cognizable by the Federal Courts.

Butz vs. *Muscatine*, 8 Wall., 515.
Rowan v. *Runels*, 5 How. 134.
Burgess vs. *Seligman*, 107 U. S., 20.
Pana vs. *Bowler*, 107 Id., 540, 541 and citations.

In the last case cited, *pp. 540 and 541*, the court says: "*But we are not bound to accept the inferences, drawn by the Supreme Court of Illinois, that in consequence of such irregularity in the elections, the bonds issued in pursuance of it by the officers of the township, which recite, on their face, that the election was held in accordance with the*

statute, are valid in the hands as bona fide holder." This later proposition is one which falls among the general principles and doctrines of commercial jurisprudence, upon which, it is our duty to form an independent judgment, and, in respect of which, we are under no obligation to follow, implicitly, the conclusions of any court, however learned, or able, it may be." * * * "We cannot follow the decision of the Supreme Court of Illinois in *Lippincott* vs. *Town of Pana*, 92 Ill., 34, without overruling a uniform current of decisions of this court, beginning with *Commissioners of Knox County* vs. *Aspinwall*, 21 How., 539. The rights of tho *bona fide* holders of negotiable municipal bonds, as we have stated them, in this opinion, are too firmly settled by the decisions of this court to be shaken."

The *Pana* case, *supra*, was much like the case at bar, the defense insisting that the bonds, in the hands of a *bona fide* holder, were void, because of an irregularity in the election. We invite the special attention to that Illinois case. *Pana* vs. *Bowler*, *supra*.

It will be remembered, as shown above, and as just quoted from the decision in the *Pana* case, that "the *uniform* current of decisions of this court, has continued unbroken from *Knox* vs. *Aspinwall*, 21 How., 539, to *Cairo* vs. *Zane*, 149 U. S., 122, decided April 24, 1893, as to the binding force of recitals upon municipal bonds, in the hands of *bona fide* holders. The above decisions of the State Court on these questions have all been made since the date of the bonds and coupons involved in this case, the last of them January, 1872. The *Eagle* vs. *Kohn* case was decided in 1876, and the *Onstott* case in 1888.

The first of the Illinois cases, *supra*, decided by this Court, construing this question, as to the rights of *bona fide* holders, under

the recitals, upon bonds, where the vote for the subscription was had *before* the Constitution and prohibitory amendment were adopted, and the bonds issued *after* their adoption, were decided long before the *Eagle* vs. *Kohn* case.

So that, aside from the general rule, that this court will act independently, and make its own decisions, irrespective of State courts, on questions concerining negotiable municipal bonds, it first had jurisdiction of these questions, as applicable to Illinois municipal bonds.

In *Burgess* vs. *Seligman*, 107 U. S., p. 35, this question of following State Court decisions is ably discussed, and the court says: "But where the law has not been thus settled, it is the right and duty of the Federal Courts to exercise their own judgment, *as they always do in reference to the doctrines of commercial law and general jurisprudence.*"

Again, in *Supervisors* vs. *Schenck*, 5 Wall, 784, the court says: "But inasmuch as the power to issue the bonds was fully conferred by law, the question of their validity in the hands of innocent holders, without notice, *is a question of commercial law*, where the adjudications, of the state courts, although entitled to great respect, do not furnish the rule of decision in this court."

In *Scotland County* vs. *Hill*, 132 U. S. 112, the rule is well stated, that applies to the case at bar. That the United States Supreme Court, will not reconsider its former decisions, to the prejudice of *bona fide* holders of the bonds issued prior to the change of decisions in the state courts."

Prior to the *Eagle* vs. *Kohn* case, *supra*, the State Supreme Court of Illinois supported the the doctrine we contend for, as to the binding force of recitals upon municipal bonds, in the hands of *bona fide* holders.

Board Supervisors Mercer County vs. *Hubbard*, 45 Ill., 405 (1867).

Keithsburg vs. *Frick*, 34 Ill., 405 (1864).

Burr vs *Carbondale City*, 76 Id, 475.

Bolton Bd. of Education, 1 Ill. App. 200—202 (1878).

Board of Education Taft, 7 Ill. App. 573—580.

Town of Lemont vs. *Stone Co.*, 98 Ill., 94—108.

The equities are all with us in this case. The interest was paid for over 17 years, upon the bonds with remarkable promptness, and without complaint. If there ever was any valid reason for defeating the payment of these bonds on the part of the defense; we submit, that, with the courts constantly open from the day of the vote to the default on the coupons; the defense has slept on his rights, and it is now too late to assert them, if any ever existed.

We think we have shown ample legal power granted to the defendant to vote the subscriptions and issue the bonds, and that that power was in substance legally executed.

We therefore ask this Honorable Court to reverse the judgment of the court below, and grant all necessary and proper orders that justice and equity may be granted the plaintiff.

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SANDERS & BOWERS,
Counsellors for Plaintiff.